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PROCEEDINGS

MISSISSIPPI STATE BAR

Forty-Seventh Annual Meeting

INDEX FOR VOLUME XXIII

October, 1952

VOLUME XXIII **NUMBER 4**

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The MISSISSIPPI REPORTER CO.

P. O. Box 191, Little Rock, Ark.

Publication Office
c/o Democrat Printing & Litho Co.
P. O. Box 191
Little Rock, Arkansas

Administrative Office
c/o Neal W. Cirlot
P. O. Box 3237
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VOLUME XXIII OCTOBER, 1952 NUMBER 4

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Entered as second class matter, November 25, 1936, at the Post Office at University, Mississippi, under the Act of Congress of March 3, 1879.
Published in October, December, Marcb, and May
$4.00 per Annum $1.00 per Current Number
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QUITMAN ROSS

Retiring President of Mississippi State Bar

PROCEEDINGS OF THE FORTY-SEVENTH ANNUAL MEETING OF THE

Mississippi State Bar

Held at Biloxi, Mississippi, on the 20th and 21st of June, 1952

The convention was called to order in the Buena Vista Hotel in Biloxi, Mississippi, at 10:00 A.M., June 20, 1952, by Quitman Ross, President of the Mississippi State Bar.

The invocation was delivered by Rev. George Stephenson of Gulfport.

An address of welcome was delivered by Mr. James Eaton of the Gulfport Bar, and was responded to by Chancellor Roy Lee Noble of Laurel.

President Ross then delivered the following address:

PRESIDENT'S ANNUAL ADDRESS

Quitman Ross

The by-laws of the Association do not specifically prescribe the subject matter of the president's annual address, but there is at least an implied directive that he shall address himself to some subject of general concern to lawyers rather than digress to some pet poltical, social or philosophical theme.

There was a time, prior to the passage of the Integrated Bar Act, when it was required that the president speak to his fellows on recent acts of the legislature and late decisions of the supreme court. During the past year there have come from the court several noteworthy decisions. In the case of *Mississippi Baptist Hospital v. Holmes*[1] the often false and fradulent plea of charitable immunity from liability for torts was finally got rid of. Now all classes of persons are liable for their torts, with two notable exceptions. One, of course, is the master, who has, and will probably continue to have, absolute immunity from liability for negligent injuries to his servants; the other class is that of parents. In 1891 Mississippi blazed the trail for parental immunity from liability for torts against children. This was on the theory that to permit recovery in such cases would tend to disrupt the family repose. There are cases where the tort itself is more likely to disrupt family repose than is the payment by an insurance company of reasonable damages for an injury negligently inflicted.

In *Vascoe v. Ford*[2] the court finally held that there may be recovery for disfigurement even when not accompanied by physical pain. Many of us were never able to understand the reason for the old rule.

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[1] 55 So.2d 142 (Miss. 1951).
[2] 212 Miss. 370, 54 So.2d 541 (1951).

Since the passage of the Integrated Bar Act of 1932 there have been only a very few lawyers who have steadfastly refused to obey the requirement of the act that all of us, with the exception of judges, become members of the association and pay annual dues. During the administration of Honorable R. W. Thompson separate suits were filed in the chancery courts of proper venue against all these recalcitrant persons. One was promptly brought to trial and after a full hearing that chancellor held the act to be constitutional and ordered the respondent suspended until such time as he should become a member and pay his dues. Because of a tragic circumstance that case was never decided by the Supreme Court. In August of 1951 another one was brought to trial in the Chancery Court of Jones County. The chancellor holding the act to be wholly unconstitutional. By the unanimous direction of all seventeen commissioners the Bar appealed from that decision and on June 9, 1952, the Supreme Court in a unanimous decision held the act to be constitutional and reversed and remanded the cause. It is now again on the docket of the chancery court awaiting trial on the merits. The constitutionality of the Integrated Bar Act has at long last been finally determined.

A review of the acts of the 1952 Legislature affecting the practice of law requires little time. After thorough study and full debate this association, during the past two years, recommended to the legislature the passage of certain laws. The association further directed that the Study Committee and the Legislative Committee act in concert in urging the passage of these bills. A member of the Senate was named chairman of the Legislative Committee, and a Justice of the Supreme Court chairman of the Study Committee. I know that these gentlemen and their associates worked tirelessly and diligently for the passage of the few measures which you had recommended, yet I have to report to you that with a single exception not one of them became a law. Most of them were passed out of the Senate but failed of passage in the House. This legislature seems to have been concerned entirely with things other than the operation of the courts and the administration of justice. Considerably more money was appropriated for the operation of the wild game department than for the operation of all the courts in Mississippi, and the chief gamekeeper was voted a salary in excess of that paid to a justice of the supreme court. The one exception I mentioned was the passage of an act increasing our annual dues from five dollars to ten dollars.

What I have just said emphasizes the low estate to which the legal profession has fallen in public esteem. Eloquent and persuasive in defense of the rights of others, lawyers have been tense and timid and inarticulate in boldly asserting and plausibly maintaining their own simple rights and prerogatives. At one time during the war some highly placed fool in Washington was quoted as saying that there was no such thing as an essential lawyer. Though lawyers predominate in the Congress, if the author of this statement was ever called to account I never heard of it. It appears that when a lawyer gets himself elected to office, the judiciary excepted, the degenerative process immediately sets in and he at once forgets his noble professional obligations, and by the time he assumes office he is a common politician pure and simple. This widespread apathy on our part, together with the natural combativeness of lawyers, has made us an

easy mark for the avowed enemies of lawyers, courts and the judicial process generally. When I first came to the bar I was astounded to find the profession divided into two hostile factions which abused one another in unmeasured terms. In some instances it was boldly hinted that wholesale disbarment proceedings might be the remedy of one group to put the other out of business. That abuse went along so constantly and so long until the public came to the conclusion that both sides were right. The era of reform and destruction then came into being. The two things most often urged against the judicial process by its enemies are, first, that it is incapable of granting specific relief in some cases because of a lack of specialized knowledge, and, secondly, that it has been too slow. The truth of the matter is that the persons who have been trying to destroy the common law courts and place their functions in the hands of a board, bureau or commission, euphemistically called administrative tribunals, are persons who want neither justice nor right but have the idea that their special administrative tribunals may be persuaded in a manner which would result in contempt proceedings were they undertaken in a duly constituted court. Dean Roscoe Pound, at one time the friend of administrative agencies but now the most outstanding advocate of the judicial process, has said it this way:

> "Not a little denunciation of judges has proceeded from those who did not wish the law to operate equally and exactly but wished to see it warped in their favor and resented judicial resistance and pressure under which administrative officials would wield."

The second contention is completely answered every day in the courts of Mississippi. It is now possible to have a cause of action accrue, engage counsel, file suit, obtain judgment, have an appeal to the supreme court, get a decision, have a suggestion of error overruled and collect on the judgment all in a space of less than one year. This ought to be sufficient to satisfy the most foolish advocate of speedy justice. There is not an administrative tribunal operating in Mississippi that will handle a controversy in the same space of time. The fact is that it usually requires a minimum of two years to get the matter out of the bureau and into the court.

In the criminal field we have done even better. In September of last year a citizen of Jones County was accused of murdering another. In October he was indicted, tried, convicted and sentenced to death by electrocution. Dissatisfied with the result he appealed to the Supreme Court, where his conviction and sentence have been affirmed and the date for his execution set for next month.

These things are frequently discussed by lawyers and on this one subject, at least, there seems to be practically unanimity of opinion. But concerted action is a different thing. It has been said that:

> "This is the law, and the law shall remain,
> 'Til the earth in its course it still:

That whoso eatheth another's bread
Doeth another's will.

Candor compels the admission that this is sometimes applicable to lawyers. Unless we band together in the same cohesive and effective manner as other professional groups the time is not far distant when the expression "Your Honor" will be completely replaced by "Mr. Commissioner," "Mr. Referee," or, mayhap, "Mr. Attorney Referee." If the destruction of the legal profession would advance the cause of justice and freedom under the law it would be justified, but such will not be the case. The arch criminal Lenin has told us in so many words that "with the October revolution the bourgeois bar ceased to exist." When a free bar perishes, both civilization and liberty perish.

All sorts of people have been invited to come before us in our meetings and tell us what is wrong with the legal profession and the administration of justice. These have included newspaper editors, bankers, financiers, and even common tradesmen. I have never known of any other professional group finding it necessary to seek outside advice and counsel on how to practice properly their profession. Each of these persons unburdened himself of a long list of supposed grievances, and all of them were in some manner dissatisfied. Many complained of the high cost of litigation. Yet the truth is that less money is spent on the judiciary than any other branch of government. A Mississippi lawyer is the author of the famous statement that the only satisfied litigant is he who goes to court and gets everything he wants and then succeeds in cheating his lawyer out of the fee.

So long have we sought lay advice until we have come to the ridiculous position of the characters in an old fable who tried to please everybody and wound up pleasing nobody. Fortunately for himself and for posterity, when Dr. Johnson came to write his dictionary there was present no critic or professional appraiser of public acclaim. Had such a person been there he certainly would have advised Johnson that his definition of oats as being food for man in Scotland and horses in England would not be satisfactory to Scotsmen. And when he defined a fishing rod as being a long pole with a fish on one end and a fool on the other, he would most certainly have been told that a remark of this kind would damage the sale of the book among fishermen. Not having consulted with advisers he wrote as he saw fit and produced the best dictionary of his time.

The lawyers of Mississippi have gone further than the characters in the fable. So far as I know we are the only profession in the country that has openly invited public criticism and provided a legal method, available to all, for presenting and airing grievances against individual lawyers. Since 1932 we have had a law which fixes the means whereby any person knowing, or claiming to know, of unprofessional conduct on the part of any lawyer may institute in a simple manner proceedings for an open investigation of the alleged misconduct. The character of the lawyers of Mississippi is typified by the fact that during the past year not one single

complaint of any merit has been made against any one of the 1900 lawyers engaged in practice in this state.

At the risk of being accused of self-laudation, let us examine quite briefly the contributions made by our profession to the cause of freedom and republican institutions. If I should undertake to conduct a Quiz Kids class in this room and ask you who are the Presidents of the United States whom you regard as most significant, most memorable and most towering, my guess is you probably would not disagree with the list I shall give you. If I were to name them I would say they were Washington, Jefferson, the two Adams, Madison, Jackson, Lincoln, Cleveland and Theodore Roosevelt. I know that some would include others, and there is some contention about some of these, but the interesting fact is that with the single exception of George Washington they were all lawyers. Let us go to the secretaries of state. This is a wonderful roster: Jay, Jefferson, John Quincy Adams, John Marshall, Clay, Webster, Calhoun, Seward. Coming down to modern times there is Hamilton Fish, Blaine, and more recently, Root, Hay, Hughes, and Stimson. With the exception of Blaine and Hay they were all lawyers. Do not be alarmed, I am not going to call a roll of all great cabinet officials. But may we not look at the roster of secretaries of war. Lawyers have played a conspicuous part in every war from the Revolution to World War II, and this is true whether we go to the field, to the administrative department, or to the cabinet. Elihu Root, the then leader of the American Bar, established the War College. And then there were Mr. Taft, Mr. Stimson, Mr. Garrison, Mr. Baker and Mr. Stimson again. If any other profession or group of professions can equal this matchless list then I will learn some American history with which I am now unfamiliar. What is the point of all this? It is quite natural that lawyers should have a great and predominant part in American affairs and a high position in government because we are what our German friends call a *Rechtsstaat,* that is a say, a law state, a true federal system. Where you have a division of sovereignty, where you have a dual system of government, you must have legal questions, and lawyers naturally gravitate into governmental affairs. And here I mean specifically to distinguish between governmental affairs, as such, and self-serving politicians, as such.

That is only a partial explanation, however. One of the architects of the victory of the recent war, a Frenchman of considerable ability, has stated that during the war, with few exceptions, the ablest and most imaginative and most resourceful and most effective administrators happened to be lawyers. This just happened to be a rare fellow, a Frenchman and an honest man. He had no partiality for our profession. He was not a lawyer. I think there is an explanation for that. I think every member of any profession should be critical of his profession in order to make it better, but I do not think any damage is done by giving credit where credit is due. The explanation is that if lawyers are good, if lawyers have range, if they are true to their own convictions, then they are what Mr. Justice Frankfurter has called experts in relevance. An expert in relevance is a person who has intelligence, disinterestedness, who penetrates a problem as far as the human mind dealing with affairs is capable of penetrating; and above all things else is free, and is not hindered in exercising

fair judgment, and is not thwarted by personal partiality or political interests. I think there is one further explanation. It lies in the fact that the Western World has trained lawyers in this deep interest which we associate with freedom—all the great charters of liberty—has given training to the mind to see things from without, disentangled from the limiting confused attachments of personal, class, or partisan interests.

By all of this it is not meant that our profession is perfect. I may say, however, that we have come closer to perfection in the establishment and maintenance of free institutions than any other profession.

I should like to conclude with the toast pronounced by Daniel Webster at the famous Charleston Bar dinner on May 10, 1847, when he said, "To the law, may we honor it as it has honored us."

Professor William Bowe of Vanderbilt University School of Law and visiting professor at the Ole Miss Law School announced that a two week tax course for practicing lawyers would be conducted at the University of Mississippi later in the summer.

Judge Virgil Griffith, formerly of the Mississippi Supreme Court and present Reporter for that court, was presented and gave the following address:

ADVANCE SHEETS FOR THE *MISSISSIPPI REPORTS*

Virgil A. Griffith

Mr. President, ladies and gentlemen of the Mississippi Bar, I appreciate this opportunity to talk to you on an important subject.

We found at last year's Bar Meeting and through questionaires subsequently sent out that there is sufficient interest among the members of the Bar to merit the launching of a project to provide advance sheet service on Mississippi judicial decisions. We have long had advance sheets of legislative acts with all the advantages thereof. Most states east of the Mississippi River are already issuing advance sheets of decisions of the supreme court. Five states in the South are already doing it: Texas, Arkansas, Georgia, South Carolina, and North Carolina. Arkansas started this twenty years ago. They get the advance sheets out in a week there. Arkansas, of course, is a very progressive state, one of the most progressive in the Union, but we can do as well. We have more lawyers than Arkansas has and ours are more prosperous. They have 650 advance sheets of the *Arkansas Reports* issued every Saturday on opinions delivered the previous Monday. Now we can do as well or better.

We went to work on a legislative act. It was prepared with the help of the Supreme Court and the Attorney General's office. The Supreme Court has been very helpful in the entire matter of reports. The act passed without difficulty from either house of the legislature. The statute authorizing these advance sheets directs that bids shall be invited and we already have five publishers in prospect. One of them is the publisher of

the *Arkansas Reports*. We know they can do the job—they've been at it for twenty-two years.

All have been notified that they must come within the price set by your calendar, not in excess of forty dollars a year for four volumes and advance sheets. Some lawyers have said that this is too much, but lawyers should certainly be acquainted with what it costs to get out law books. There are only one hundred lawyers in Mississippi taking the *Mississippi Reports*. If you are astonished at this you are no more so than I was when I found it out two years ago. There are two reasons. First, the law limits the price of those books to four dollars. They cannot be produced for that so the publisher sells at a loss. Consequently, the publishers have tried in every way to cut down the subscription list. Another reason is that the reports have come out from six months to two years late. The lawyers have turned to another report which gets out advance sheets.

Bids are to be received July 2. The advance sheets are going to be put into effect the third Monday of September. Every lawyer who wants to can get them. The advance sheets will be mailed out Saturday and every lawyer can have on Monday the Supreme Court opinions that were delivered on the previous Monday. All of the opinions will be published, not just selected ones. Only Mississippi matter will be included. There will be no advertising matter except on the cover.

Another valuable feature is being added to the *Mississippi Reports,* a cumulative index. Each volume of the *Mississippi Reports* you have now has a word index. Hereafter, every tenth volume will have the index for that volume and the preceding nine.

We want to run the subscription up to at least six hundred. If we can reach seven hundred we shall be ahead of Arkansas.

We believe, and I think the Supreme Court shares this opinion, that this is a milestone, a step forward in the practice of law in Mississippi. I hope all of you will subscribe to these advance sheets and we will make this one further advancement in the practice of law in Mississippi.

Thank you, Mr. President.

The next order of business announced by President Ross was the report of the Memorial Committee by its Chairman, Mr. W. A. Strong, Jr. The report may be found in Appendix A.

The report of the Committee on American Citizenship was then given by its Chairman, Chief Justice McGehee. The report may be found in Appendix A. Justice McGehee then made the following address:

RESPONSIBILITIES OF CITIZENSHIP

Harvey McGehee

Thank you for such a cordial reception.

I have a few remarks of my own to make in connection with the committee report. I may say something that I have said on former occasions and which some of you here may have heard, that I believe that the greatest thought that any human being can entertain on this earth is a sense of personal responsibility to God. The second greatest thought that an American citizen can entertain is a sense of responsibility for the maintenance and preservation of those great principles of government upon which this nation was founded.

In these trying days when our country is in peril at the hands of those in positions of power who would sacrifice, upon the altar of political expediency, the greatest constitutional system of government that ever existed in all the annals of history, it behooves every thoughtful citizen of America to fully realize, without delay, the corresponding duties and responsibilities that are implicit in the right and privilege of citizenship.

In both England and America, it has always been true that the individual citizen has been proud of his rights, liberties, and the freedoms guaranteed to him by the laws of the land; but it should be remembered that there sometimes comes a time when one may exercise even the highest privilege of giving up a right in the interest of the public welfare. It was in recognition of this principle, and to attain this ideal in government that our forefathers were able to lay broad and deep the foundations of American independence.

A free and intelligent use of the ballot by all of those rightfully entitled to vote is the one and only means left to the people to preserve their system of constitutional government under which America became the greatest and strongest nation on earth.

Proud of the history and traditions of the past, which have become our priceless heritage as Americans, may we never become disciples of the doctrine of wanting to "Let well enough alone." Abstractly viewed, such a maxim is beyond criticism, but it finds its fatal weakness in the fact that there never was or will be a day in which it ever was or will be well enough with any community, county, state or nation. There is no such thing as rest in the economy of the universe; there is no such thing as standstill in the order of any civilized society.

Nevertheless, progress does not always come through change. Until a few years ago England was a great and independent nation, enjoying the blessings of a government and a national economy based upon a free enterprise, more nearly resembling what was once our own than any other Europeon country. Then socialism made its tragic conquest, nationalized the nation's basic industries, and gained supervision and control of almost all business of every kind and character, to the destruction of a free private enterprise, the loss of the liberties and the lowering of the living standards of a once proud and free people.

The socialist government in England did not come into power by accident. That once great country, like most other nations in Europe, was lead stealthily into a socialistic state by a gradual process, the same process by which the United States is being sneaked into socialism by those in positions of national leadership at Washington who call themselves Economic Planners, promoting the "Welfare State."

Up to a certain point it is possible to resist these controlling tides of governmental changes and to reverse them, but a time comes when they are so strong that society loses its power of decision over the direction in which it is going. It will be at a national political party convention in 1952 that the American people will either use or lose their opportunity to determine for themselves whether we shall retain our form of government as originally ordained and established or shall follow the leadership of those who would set up a Socialist welfare state.

For a thousand years, says Winston Churchill in his War Memoirs, no alien enemy has been able to invade the shores of England. And it is quite true that the British had been able to keep Hitler, as they had kept Napoleon, from crossing the English Channel. But for all that, socialism crossed it and set up a Socialist Labor Party Government that has destroyed the Nation's free enterprise system and left that once great country prostrate and financially dependent for its very existence upon the capitalistic system of free enterprise in America which our advocates of the welfare state are seeking step by step to destroy.

In that country the process by which was accomplished the nation's downfall was that one group would be for socialized medicine, another for government control of the coal mines, another for such control of electric power, another of the railroads, and so on until all basic industries became nationalized, while the smaller businesses were left to private ownership but under government supervision and control. The people generally did not seem to realize, until it was too late, that all this added up to socialism, and that the citizen had lost his liberty while the government was losing about 250 million dollars on the operation of the railroads, 145 million on the coal mines and proportionate amounts on other socialistic undertakings, all of which losses have been taken care of with funds borrowed from the United States. In other words, we are subsidizing or underwriting the cost of the losses of socialistic experiments in government abroad and at the same time the American voter is subscribing to a planned socialist economy at home when he helps to keep in office our present national leadership.

In considering whether we have precisely the same movement at work in America that converted England into a socialistic state, we are not to confuse the present virile and growing socialistic movement here with what we have known for so long as the Socialist Party in the United States, founded by Eugene Debs as its first candidate for president many years ago and thereafter sponsored by Norman Thomas. That was an honest, though ill-advised, movement run by men who offered socialism to the people and called it by its true name. Modern socialism, that is, the planned national economy they offer us, means the assumption by the

government of the responsibility and authority for the control of the entire economic system. It does not mean that the government will take over every farm, shop and factory. It means that it will take over and operate the great basic functions of credit, electric power, production of fuel, transportation, education, medical care and the welfare activities. The rest of the economic system may be kept in private hands to be operated under the plans made by the goverment and carried out under the compulsion of an FEPC and the supervision of government bureaus.

This is the type of socialism with which America is now threatened. It is after the fashion of the British model, but the movement avoids calling itself socialist, so it is being promoted in America without ever pronouncing in public the word "Socialism." They prefer to call their system the Planned Economy. It is a fradulent name, used to sell socialism to an unsuspecting public. It is precisely the same thing that is in operation in England. It could be called correctly a Planned Socialist Economy, for that is what it is.

We have been inclined to dramatize the communists as the chief internal enemy of our economic system and form of constitutional government, and we should not underestimate the threat that they constitute among us. They are indeed a traitorous bloc in our midst and they have frightening potentialities. But they know that only a very small minority in America are as yet willing to subscribe to the teachings of communism as such. The Russian Communist will be fairly well satisfied if we will only follow the program being laid before us by our Economic Planners for continuing to increase our national debt of $262,000,000,000 and current annual expenditures of $70,000,000,000. They have not forgotten the prophecy of the Russion dictator, Lenin, made more than two decades ago, when he said, "Some day we will force the United States to spend itself into destruction." They know that now the federal government is taking from nearly 45,000,000 of our citizens their entire income over and above that which is required to keep them alive.

Never in the history of this republic has the proper use of the ballot become so important as now. It is the only means of checking an onrush to disaster, the one method by which we may yet control our destiny.

May I close with a quotation from the matchless eulogy on George Washington delivered by Daniel Webster in 1832, when he said:

> "Other misfortunes may be born, or their effects overcome. If disastrous wars should sweep our commerce from the ocean, another generation may renew it; if it exhausts our treasury, future industry will replenish it; if it desolate and lay waste our fields, still, under a new cultivation, they will grow green again, and ripen to future harvests.
>
> "It were but a trifle even if the walls of the national capitol yonder were to crumble, if its lofty pillars should fall, and its gorgeous decorations be all covered by the dust of the valley. All these may be rebuilt.

"But who shall reconstruct the fabric of demolished government?

"Who shall rear again the well proportioned columns of constitutional liberty?"

President Ross called for the report of the Junior Bar Section. The report, given by the President, Mr. Kenneth I. Franks, will be found in Appendix A. After it was adopted the meeting recessed for the morning.

FRIDAY, JUNE 20, 2:30 P.M.

President Ross called the meeting to order. As Chairman, Judge Lee Hall gave the report of the Study Committee. This report may be found in Appendix A.

At the request of President Ross, Mr. David Welch introduced the next speaker, Mr. Francis X. Busch of the Chicago Bar, who gave the following address:

DIRECT AND CROSS EXAMINATION

Francis X. Busch

Thank you, Mr. Welch.

Mr. President, members of the Mississippi State Bar Association, distinguished guests, and ladies and gentlemen: It is a distinct pleasure to have been asked to address you. After an absence of some thirty years it is good to again be here in Biloxi, of which I have many fond memories.

Your President invited me here to talk to you on direct and cross examination and I am going to try to say something to you on the subject that will be of value. I like to think of direct or cross examination, or any other part of a trial, as just a part of the entire process of jury persuasion. The young lawyer fails to realize, I think, that everything that happens in a lawsuit, everything you say, everything you do, consciously or unconsciously, enters into the process of jury persuasion, and affects what you want to accomplish, namely, to persuade the jury to be for you and your case. Older lawyers learn this by bitter experience, which is perhaps the best education of all. I know of many instances in which a case was won or lost by the smallest kind of incident.

The most important thing in your case is the preparation given it before trial. From the time of Cicero the theme of lawyers has been preparation. You win before you get to the courtroom. You win by going into every possible phase of the case, working out every detail ahead of time. There is nothing more important than the determination of the order in which you will call your witnesses. To come into the courtroom with no other idea except that you have eight or ten witnesses by whom you expect to prove the various important elements of your case, thinking that it does not make any difference in what order you put them on, is a poor way to conduct your case. Far too often the order of presen-

tation of the witnesses is determined by which witnesses are in a hurry to get away. One of the most important things in a lawsuit, whether you represent the plaintiff or the defendant, is to have a predetermined order in which to put on your witnesses. Study your witnesses ahead of time and figure out what is going to be the most persuasive order in which those witnesses can be presented. Of course, the chronology of your case will have a good deal to do with that, but it does not have everything to do with it. It seems to me that in arranging the order of your witness to set up a factual situation, it is important to lead off with your very best witness. The reason is that the first witness called for the plaintiff gets the brunt of the cross examination. He is asked about all the details of the evidence, directions, the weather, who was there, and all the other circumstances that surround an occurrence. You want a good first witness. He does not necessarily have to be an educated man, but should be a man who has quick perception, who can understand the questions and grasp them readily, who has a sense of evidence, and who will be able to handle himself on cross examination. If you lead off with a good witness and he comes through in good shape, the cross examination of your subsequent witness will ordinarily not be nearly as extensive as that of your first witness. I say he does not necessarily have to be an educated man, he does not have to be a man who uses proper English, or anything like that. He does, however, have to be a man who knows his story and has confidence in it. If you have such a one, he should be a witness who has not given a statement to the other side. Select the best witness you have and put him on the stand first. From then on sandwich in your weak witnesses. Try to preserve the idea that you have a strong case, a case you have confidence in. You have to do that if you are going to persuade a jury. Save your second best witness for the last, because the worst thing you can do in a lawsuit is start in high gear and slow down to a stop. You have got to keep the interest up to the end.

Another observation which should be made before going into direct examination of witnesses is this. We lawyers are so familiar with the courtroom that we forget our witnesses are not. I always talk to a witness before I put him on the stand, and one of the questions I ask is, "Have you ever been a witness before?" I have been astonished to find that nine times out of ten the witness will answer that he has never been in court before! You have got to tell the witness something about the courtroom. You have got to tell him something about the procedure. You have got to prepare him for the strange scene upon which he is to enter. You have got to try to take off that hesitation and that awe he will naturally have when he comes into a courtroom in an important case. Some lawyers go to the extreme of taking their witnesses over to the courthouse two or three days ahead of time and have them watch an actual trial there. I think this is extremely important.

Another thing, when commencing direct examination many lawyers say, "State your name, age, residence and occupation." I have never seen a witness who fully answered that question. He will give his name, then stop. He has forgotten all about the age, the residence and the occupation. It is a silly question, and it is a silly practice to try to hurry the preliminary part of the examination. In the psychology of trying to influence the jury

you must make sure that the jury and witness understand each other. To do this you must put the witness at ease. You can't do that better than by taking it a little easy. "What is your name?" "Where do you live?" Oh, yes, that is out here in the South Side." "How long have you lived out there?" Ask a half dozen questions and ask them in a rather slow, rather conversational, rather confidential manner. There is no objection that can be made to those questions, and the witness will get his poise. He will get the idea, "I am up here and doing all right." That is highly desirable before you plunge him into the serious matters of the case, where he is apt to be interrupted.

To keep the witness from being frightened, particularly timed witnesses, I always explain to a witness that he is going to be sworn, and what the oath is, and how it is going to be administered. Tell your witnesses ahead of time that they are going to be sworn, that the clerk will order them to stand up and will shout at them, but not to be disturbed by it.

Then it is very important, it seems to me above all other things that the jury should hear everything that your witness says on direct examination. I have an idea that the best thing a lawyer can do is to take himself out of the view of the jury. Do not stay in front of the jury box. Get over behind the jury box, where the jury cannot see you, and talk across the jury box. Then tell the witness on the witness stand, "I am going to stand way back here, so if you talk right to me and talk loud enough for me to hear, everybody else will hear." In that way the witness will face the jury, and the jury the witness.

Sometimes a witness gets to talking too rapidly. You must watch that. A favorite way of handling it when a witness is going too fast, is, when he gets to a pause, pretend that you did not hear the answer, or pretend that you did not understand it, and say, "Will the reporter please read the answer?" The reporter usually reads it rather slowly. That slows up all of the proceedings. The jury gets the answer repeated. You start the witness over from where he left off. He has been slowed up. There is another virtue in the tactic: where a witness is talking very fast, it is a pleasant satisfaction to know the reporter is getting everything he says for your record.

In the examination of a witness ahead of time, explain to him about the objections. Explain to him that it is inevitable that in the course of examination the lawyer on the other side will object. Tell him he is not to be disturbed by such objection, and not to be afraid of the objecting lawyer, no matter what he may have heard about his reputation. Tell him the other lawyer is not going to object because he is mad at the witness, but for other reasons. Prime him ahead of time, so that he will not be disturbed when these objections occur.

Another thing which I think is very important in a direct examination of witness is not to ask leading questions. That is one thing that some lawyers never learn. Some of them will argue that it is unimportant to ever learn it, because, "What about it? Suppose the question is leading? If it is objected to, you can always reframe it." Under that theory, you are losing sight of one very important thing: if you ask your questions in proper

form, and they are answered by the witness responsively, you don't encounter any objections because they are leading questions, and you have a continuity in your story. That is what you want.

You do have some cases where your witnesses are in the higher walks of life, people with superior educations, but those are the exceptions. Ordinarily you don't have that class of witnesses, and you have quite ordinary men and women on the jury. We lawyers are very apt to carry our legal jargon into the courtroom, and ask unnecessarily complicated questions. Have in mind that your witnesses and probably your jurors are not used to the courtroom, not used to lawyers, not used to lawyers' language. There is no excuse for asking a witness a question such as, "When did you see that *document?*" Maybe he has never heard the word "document." Call it "paper." You use the word, "Well, now, *subsequent* to that, what happened?" That is not a word he understands. Ask him, "After that what happened?" In other words, use witnesses' language and use jurors' language.

In direct examination there are two well recognized methods of asking questions. One is, ask specific questions, one right after the other, and hold the witness down to rather short answers. There may be cases where you have to do that, because circumstances alter cases. The other method is, just as soon as you can, ask the witness to go ahead in his own way and tell what happened. That, it seems to me, is a preferable method so far as you can pursue it. Personally, I like the idea of asking specific questions up to the time you get to the very crux of the case, then ask the witness to go ahead and tell what happened. Then come back with specific questions on anything he has left out. The trouble of carrying through an examination entirely with specific questions is that the jury is very apt to get the idea that it is too much of a rehearsed story. It looks too much as if the lawyer is doing the testifying, that he has it all fixed up with the witness to get a Yes or No to everything he wants. On the other hand, if you give the witness himself a chance to swing in and carry the story it has a better effect upon the jury. It is more interesting, the jury will listen to him.

Another thing in the direct examination of the witness is the handling of an unresponsive answer to one of your questions. It is the rule generally throughout the United States that the only one who can move to strike out an unresponsive answer, is the examiner. There is no ground of objection for the other side, unless it is bad for some other reason. There are many lawyers who, when their witness through ignorance or any other reason volunteers a lot of irresponsive matter, begin to scold the witness. Angrily they say, "Don't say that," or, "That is not what I asked." Here again, do not forget you have twelve men in the jury box who are watching you and the witness, and that is your witness and *you* are scolding him. By putting him on the stand, you vouched for his credibility. If you want the jury to believe your witness, you certainly cannot get anywhere by scolding that witness. A much better tactic was that used by the late Clarence Darrow. Many times when the witness didn't answer a question responsively I have heard Mr. Darrow say, in his very drawling way, "Well, I guess you didn't understand my question. My fault. I will put it again."

Beautiful! If the jury is smart enough to figure out the witness is to blame and the witness is a dumb one, it cannot help but have regard for the lawyer who was so courteous and so willing to take the load away from the witness. If you do move to strike out the answer, do it gently and put the witness at his ease. Do not let him be annoyed by your scolding him.

Now, just a word about the direct examination of expert witnesses. You know an expert's opinion is just as good as his qualifications, no better. You are asking his opinion because he is a qualified man. That is why you ask him, if he is a doctor, what school he graduated from, what degrees he holds, what post graduate study he has had, what hospitals he is connected with, what teaching faculties he is connected with, what books he has written, and so on. You do that to show that he is a man of superior qualifications, so that his opinion is worth a lot more than the opinion of some man who does not possess such qualifications. Therefore, when you put an expert on the stand, qualify him. Do it deliberately and earnestly, so that you get over to the jury that here is no ordinary pill peddler, but here is a really great physician, a man with a reputation. Many times a smart defendant's lawyer, particularly when you call an expert who has eminent and outstanding qualifications, will say, "If the Court please, we admit the witness' qualifications." If you are a bit green at the task, you may fall for the trick and say, "All right, if you admit them, I will go right ahead." But unless you ask those qualifying questions the jury does not know how good your expert is or how good his qualifications are. The defendant has accomplished his purpose. Your highly qualified witness does not look any better than some fellow that came out of medical school last week. If you are wise you will say, "No, your Honor, I want the opportunity to qualify this witness. He is going to give his opinion. The worth of his opinion depends on his qualifications." If you state it that way it has been my experience that most judges will readily recognize the force of the statement and permit you to qualify your witness. They certainly should. Sometimes judges say, "Well, they have admitted the qualifications, you don't have to prove them. Go ahead with something else." I think that is an unfortunate attitude for the Court to take, and I think the lawyer should not hesitate to argue with the court for the right to show the qualifications of his witness.

There is no place where your preliminary preparation is more important than it is with your experts. With medical experts, construction experts, electronic experts, or any other kind of expert you may use in the broad field of expert testimony, it is absolutely essential that the lawyer spend enough time with his witness to understand as much as he can grasp of the general subject, and as much as he can possibly grasp of what the witness is going to say, and the reasons he is going to give to support his opinion. In other words, it ought to be such a thorough preparation that you know ahead of time just exactly what your expert's answers are going to be. In that preparation you will caution the witness to avoid the use of technical terms or to explain them as he goes along.

I have spent as much time as I can on direct examination if I am to discuss cross examination.

Cross examination was recognized as a feature of the common law jury trial as early as 1670. The study of cross examination is something that ought to be of prime interest to Anglo-Saxon lawyers, because it is a purely Anglo-Saxon creation. It has been developed as an art in the Anglo-Saxon courts. It is a part really of the jury system. You are all familiar with the old truism that you read in the books in law school, that the two great tests of truth in the court room are the sanctity of the oath and the cross examination. Sometimes I have had a little doubt of the former, but there is no doubt on earth about the value of cross examination in the hands of a master.

Dean Wigmore says this of cross examination. For two centuries past the policy of the Anglo-American system of evidence has been to regard the necessity of testing by cross examination as a vital feature of the law. The belief that no safeguard for testing the value of human statements is comparable to that furnished by cross examination, and the conviction no statement except by special exception should be used as testimony until it has been probed and sublimated by that test, has found increasing value and the puerilities so often found associated with cross examination have failed to nullify its value. It may be that in more than one sense it takes the place in our system which torture occupied in the mediaeval system of the civilians. Nevertheless, it is beyond any doubt the greatest legal engine ever invented for the discovery of truth.

Whenever I talk about cross examination, I am bothered by the fact that we have two rules on cross examination in this country. One is the so-called American rule, the other is the so-called English rule. Most states follow the so-called American rule, a few of them the so called English rule. What is the difference? Under the English rule you are not limited in your cross examination to those matters that were brought out on the direct examination. You are permitted to exploit the witness's mind and develop everything he knows about the case, whether it was brought out on direct examination or not, and you are allowed a much broader latitude in bringing out those facts which go to the credibility of the witness. The American rule is stricter. The cross examination is limited to those matters brought out on the direct. To put it in another way, the cross examination must be germane to the direct examination, and you cannot go outside it, even though the witness may possess a great deal of knowledge that was not developed by the direct examination.

Now the first thing I want to stress about cross examination is the same thing as about direct examination. Great cross examinations simply do not just happen. Great cross examinations are the result of preparation. It may be in some cases you do not know who the witness is going to be until he is put upon the witness stand. In a great many cases, however, had you been diligent you would have known who the witnesses were going to be that were called by the other side, and you would have had some information in hand with which to cross examine. What are the sources for such knowledge? Well, in talking to your client find out from him everybody whom he knows who can possibly be a witness in the case, what they may say, what weaknesses they may have, and anything else you can possibly use. In tort cases you have access to police reports and

things of that sort; these should be examined in any case. I don't know how far you have gone in Mississippi, but in some states we have very liberal statutory provisions for pre-trial examination and investigation to discover among other things who the witnesses are on the other side. Those witnesses should be examined. Even if the witness refuses to talk with you because the opposing lawyer has instructed him to discuss the case with no one, merely bringing that out in cross examination may help your case. That is going to make some juror think the witness had something to hide, that it would have been the fair thing on his part to have told what he knew. And you can follow that up.

Very often opposing witnesses will talk to you. Sometimes you will discover things that you can later use in your cross examination.

There are other kinds of preparation. I do not have time to give you a lot of instances, but I like to refer to Lord Carson's cross examination of Oscar Wilde. That was a civil suit Oscar Wilde brought against the Marquis of Queensborough for libel. You know about the case. The defense was that Lord Queensborough's son, who had come under Wilde's influence, was being corrupted by Wilde. Carson spent two or three days going over Wilde's writings, which he read from cover to cover and knew almost by heart, to try to show the tendency toward immorality in every sentence in these words. But he did not get anywhere, because Wilde was smarter than he was on that subject. However, after he exhausted that he began to put specific questions to Wilde, whether at such and such a time and place, at such and such a hotel, he was not with a party named so and so, and had not spent the night there, the companion being a male always. Question after question of that kind was asked, and after that had gone on long enough for Wilde to realize that, in plain language, they "had the goods on him," he broke down. Afterwards, when all of these witnesses were called and sworn in a body, Sir Edward Clarke, who represented Wilde, threw up the sponge. That was the preliminary to the criminal case that sent Wilde to prison and to oblivion.

One of the most important decisions that faces a lawyer in a trial of a case is whether he is going to cross examine or not cross examine. The young lawyer—and, I am afraid, some of the older ones too—think that something is going to happen to them if they do not cross examine every witness that is put upon the witness stand. Of course there is no obligation to cross examine a witness. There ought to be a purpose in it. Mr. Steuer, the famous New York advocate, said the purpose of cross examination are two: either to destroy the witness or to destroy the story told by the witness. Of course, you can go on to say you sometimes want to explain, qualify, or modify, but, fundamentally, those are the two purposes of cross examination. I wish I had time to give you some of Mr. Steuer's great cross examinations that illustrate both of those purposes. Unless a lawyer, facing an adverse witness, sees that he can accomplish one or the other of those purposes, cross examination is going to do him more harm than good. Why? Because if the cross examination does not accomplish either one of those two purposes, all that it does accomplish is to have the same story repeated to the jury over again. Repeated on cross examination. it gives it a more deadly emphasis than it had upon the

direct examination, and you know, when it comes to influencing a jury, nothing succeeds like repetition. Never forget that in the examination of witnesses or in argument.

I remember one of the first cases I tried. I had started to study law in the office of old Judge Wing, a great trial lawyer. After I had left his office, he happened to be in the court room when I was arguing a jury case. I was anxious to have that old man compliment my argument. He answered, "You argued the questions in the case all right, the question of negligence, contributory negligence and damages, but you only told it to the jury once." I asked what about it. "T'aint enough," he said. "It's enough for the lawyer, enough for the court, but it's not enough for the jury. Tell it to them three or four times; tell it to them until the court stops you. You have got to burn it into them." And that is absolutely true. We don't realize it, but that is also the effect of a cross examination which merely repeats the direct.

In examination what order should you follow? Different lawyers have different ideas on that. I think the most stupid order for the cross examination of a witness is to take notes as he testifies on his direct, then begin right at the top and run down the list, asking him everything over again. The reason why I think that is stupid is because that is the sequence and the order in which the witness has learned his story. He is going to give it to you just as good as he did on direct, or better, because it is the second time. Some lawyers work from the back end forward. I think the better method is certainly not to cross examine the witness on everything he said on direct. There is never any point in that. Pick out the thing as to which you think you can do one or the other of the things Mr. Steuer talked about.

By all means, do not ask that "one to many" question. When you get to a good point, stop. Whenever, on cross examination, you get to a point where a witness has made a statement that is inconsistent with his direct, or made a statement good for you, do not try to polish it. If you do, he will get away from you nine times out of ten. Take it as it is.

Another thing to remember in cross examining any witness, a thing I think lawyers are apt to forget because we think we are a pretty smart lot of fellows, is that the natural sympathy of the jury is with the witness, not with us. Lawyers from time immemorial have not been favorites with the laity; you know that. We have been the butt of satire and irony in plays and stories since long before the time of Shakespeare. You can pick up any Sunday supplement and see that they are not through with it yet. It is well to have in mind that the sympathy of the jury is with that witness, and treat him accordingly.

There are two methods of cross examination. There is the finger-shaking, foot-stomping, brow-beating kind; there is the smooth, ingratiating, velvet glove method. I have seen them both in action many times. As the result of that observation, I have come to believe that you do not get much out of a witness by hammering him. I think you can get much more out of a witness by ingratiating yourself with him and getting him to talk. Usually, the more he talks, the better off you are.

I had occasion sometime ago to read a good part of a record in an insurance investigation in New York conducted by the late Chief Justice Hughes. You remember that that investigation was probably the most successful legislative investigation that ever took place in America, and it made Mr. Hughes governor of the state and almost made him president of the United States. That cross examination is a masterpiece for study. I say "cross examination" because, while he put the witnesses on the stand, practically all of the examination was cross examination. It had to be because he was faced with hostile witnesses, but the smoothness and suavity with which he pursued each witness was masterful. Where the witness attempted to evade, he said, "Now we think you misunderstood, Mr. Witness. Will you please answer the question?" He just kept everlastingly at it. It is a classic example of what can be accomplished by a carefully prepared, confidential, ingratiating examination. It was Mr. Stewer's method of cross examination. It was Mr. Darrow's method of cross examination. I think it is the method most apt to produce results.

Another observation on the cross examination of experts is this—Do not try to cross examine and beat an expert in his own field unless you are positive that you know as much about the subject as he does. Of course, you will get a medical expert on the stand once in a while who pretends to know a great deal when he does not, and it may be that a good lawyer, because of large experience with that kind of cases or because he has taken a course in medicine, is a match for that kind of witness. Nevertheless, unless you know that you know as much about that man's technical field as he does himself, cross examine him about something else. There are always some odds and ends you can cross examine an expert about, if you feel you must cross examine.

Having in mind that your jury knows as much about the case as you do and you have to persuade them, I think another important item in cross examination is your argument. Argue what you have accomplished on cross examination. You cannot assume that the jury appreciates the force of a successful cross examination as you do. You may have received an answer from the witness on cross examination that just elates you, but it may not have registered with the jury at all. Again, it is the old idea of repetition. Those things should be argued to the jury. "Gentlemen of the jury, I want to bring your mind back to the time when John Doe was on the witness stand, when he testified. Here is an expert. This is what he said. Here is an expert, but here is what he said on cross examination." Drive it into them! If you nailed the witness on cross examination, go over it again with the jury in argument. Then they will share your conviction that he destroyed himself.

I want to make a final observation, about re-direct examination. It may be very important. A lawyer is often confronted with a very serious situation. One of your witnesses under cross examination has been pretty badly rattled. Should you re-direct him or not? This is a very important question. It demands a lot of thought, quick thought. If a witness is alert enough to rehabilitate himself, take the chance. It may be that he has just been confused on cross examination and a new well-put question will straighten him out. If he is in pretty bad condition the best thing may be

to forego your re-direct examination and trust to off-setting the effect of his testimony by your other witnesses or by your argument. If you attempt a re-direct of a badly discredited witness you run the risk that the witness will be worse on re-direct than he was on cross, and thus emphasize the cross examination and leave you in a worse plight than before.

I started out by telling you that preparation was everything: preparation for your direct examination, preparation for your cross examination, preparation for your argument. It is not an easy game. It is the hardest part of law practice. But I think you men who are trial lawyers, who are ambitious to be trial lawyers, will agree with me that while everything in the law business is satisfying and interesting, there is no game in the world that beats the trial game for satisfaction and sport.

I thank you very much.

The report of the Budget and Finance Committee, given by Mr. Warner Beard, Jr., Chairman, and the report of the *Mississippi Law Journal,* by Mr. Cary Bufkin, Editor, were heard and considered together. These reports may be found in Appendix A. After both had been adopted the meeting was adjourned by Mr. White, acting as Chairman for President Ross.

SATURDAY, JUNE 21, 9:30 A.M.

President Ross called the meeting to order. Mr. William Hewes of Gulfport gave his report as Complaint Commissioner. It may be found in Appendix A. Mrs. Zelma Price spoke briefly concerning the work of the Legislative Committee. The report of the Chairman of the Committee, Senator W. B. Alexander, may be found in Appendix A.

Mr. Jack Travis of the Jackson Bar introduced the next speaker, Mr. A. S. Cutler of New York City, who gave the following address:

LAWYERS' PRACTICE MAKES PERFECT

A. S. Cutler

I have no illusion that practice can make any of us perfect, but practice can make us better than we are. If the only fellow allowed to take batting practice were in the .300 or over class, that team would not do very well. The players hitting .180 would never get very far. The good manager makes everybody practice, that is, everybody that ever expects to take a swing at the pill. The theory is, and we know it works out in the practice of baseball as well as law, that by so doing we improve to the extent that our batting eye sees more clearly, and we get up a little bit better in the box score. So I say to you, in the same way, the practice and experience we have and that we undergo through the years is the thing that makes us better lawyers.

Motion pictures and theatrical performers have a way of showing the lawyer in a portrait that we would never understand. He is always pictured as a sparkling dynamic hero who defies customs, orders judges

around, and his secretary is always desperately in love with him, and all the successful men of the metropolis stand in line, hat in hand, to offer him munificent retainers, which he scorns. This romantic stuff, believe me, is seldom if ever justified. There is really nothing to a lawyer worth watching that is romantic. There is nothing exciting, nothing dramatic. You know why? The only thing a real lawyer is doing is working, working, working, and there is certainly nothing romantic about that. The lawyer's life is not a life of ease and comfort, nor is it an easy way to get rich. Make no mistake, almost any person of reasonable intelligence can do better, in a financial way, in business. The only lawyers worth their salt are those who love their profession so much that they are willing and eager to sacrifice fortune to it. The life of such zealots can be happy because there is ever present human interest in the way they earn their daily bread, and there is a cultural background which more than compensates for mere money, or the lack thereof. So I say to the younger men, and I hope the older men will agree with me, unless you are prepared to make these sacrifices, go into some business or trade, do not stay in the law.

If you resolve to stay in our profession, you owe it to yourself to be a good lawyer, a real lawyer, rather than an indifferent or just average one. The keystone to a lawyer's life is effort, unlimited and painstaking effort, effort applied to each case you handle. Prepare, prepare, and keep on preparing. That is the only way to win your cases. Over-preparation never lost one. Whether your case is a twenty dollar one or a twenty thousand dollar one, go in there prepared and resolved that you are going to do your best. Do not make the fatal mistake of the actor a thousand miles away from New York, in a small city, who decided that that evening he did not have to worry about his performance and went listlessly through his talk. That was the very evening that a Belasco agent was in the audience looking for talent, and of course his performance made him completely overlooked.

Ours is a profession where we have not only that proud privilege of doing a service to the community, but we have to demonstrate in public our ability, and we never know who is going to pick us out to put the leaf of laurel around us in life.

In ancient times the lawyer was the leading citizen of the community. He was respected and revered. He was the leader, and advised his neighbors in every emergency, and happily presented and maintained family and business relationship. But the lawyer has been falling in public esteen for many years. Often we hear, partly in fun and partly in seriousness, "Be careful, here comes a lawyer," or, "We better stop talking about that deal, there is a lawyer present, and he will get us mixed up." The laymen think of the lawyer as a sharpster and trickster. I think it is partly our own fault. I think whenever we surrender our integrity, whenever we forget that we have to serve the community with honor ,whenever a lawyer descends to over-cunning maneuvers, he besmirches not just the lawyer, but he befouls the interest of his profession.

The truth is, honesty in our profession is not merely a good policy because of ethics and morality. It is a good policy because of the huge

dividends it affords in satisfaction in service and in an interesting cultural life. Our great trouble is that some of our lawyers have not held our standards high enough. We must all realize that one rotten apple in a big barrel gives the barrel an unwholesome appearance, and one slight infraction by a lawyer gives the layman an excuse for attributing to the whole profession that slight infraction of one crack-pot in our profession. That is why I think the point I raised with Erle Stanley Gardner night before last is one of the most vital things before the American Bar today. If forty-five million people, buying one author's books, believe that the shyster, the conniver, the fellow that makes false evidence and supports perjury, the man who stops at nothing but the penitentiary gates is representative of us, we are going down lower and lower, not in the estimation of the public alone, but of ourselves. That to me is one of the great questions before our profession. We ought to get back to the point where we were many years ago, above the market place, above selling merchandise over the counter, above the fish peddlers. Not that we look down upon them; theirs is an honest business. But if we haven't a higher purpose to serve than the desire to get a verdict, I say to you that we are in a sorry state.

What is it about the lawyer that offends the layman anyway? Why is it that we are in such bad repute? Let me see if I can give you a few reasons. The first thing is that a lawyer is superior. He has an unfortunate habit (not in Mississippi, you understand) of looking down his proud Roman nose at the people whom he meets. The witnesses do not have his education, the client seldom has his education, the people he deals with seldom possess his degrees. But do not forget that the man who comes into court in overalls is far superior, in his own field, to any lawyer in that field. That is something he knows. When a lawyer is stupid enough to think he has the right to look down condescendingly upon such people, he is making the first cardinal error that hurts us so much with the layman.

What is the next thing that we lawyers have a bad habit of doing? We are impatient. We are courteous, but not to our clients. A man comes into my office. He wants a half hour consultation. He is paying me fifty dollars for a half hour. You would think the least I could do for the fifty dollars is to let him have the half hour, but do I do it? No, I am a lawyer. He starts to tell his story. I say, "Mr. Jones, wait a minute. Now my experience has taught me that I get the story better if I ask you questions." I start about 150 questions. Finally, the client finds himself outside my office door, waiting for the elevator, and he says to himself, "Gee whiz, I wanted so much to tell my story to that lawyer, and he hasn't heard it yet." Now that is another thing about our profession: we don't give the other people a chance the way we should.

What is the next thing about us? We ought to know how to keep the people that meet us happy and contented that they saw us. We ought not to be sarcastic. We ought not to enter a conference room with the main idea in our minds that we are going to show how brilliant we are, how legally perfect and technical we may be, though it results in the parties reaching no agreement. When we do they criticize us. Most of us criticize our professional brethren, and most of them criticize the layman. We all should remember that "there is so much good in the worst of us, and so

much bad in the best of us, that it well behooves any of us not to talk about the rest of us." Yet such a good and simple philosophy is overlooked by us as lawyers.

What makes a man a good lawyer would take many facets of the legal jewel, and you can't find just one that makes him a good lawyer. First (and this applies in larger cities more than it does here) a lawyer should be suitably clothed and garbed. He should not dress like the carpenter, in overalls, nor like the actor in full make-up. He should be dignified, not flashy in appearance. He must possess the voice and ability to speak graciously and forcibly. He should be mannerly and courteous. He should have self-respect and self-confidence. He should be in surroundings, whether a twenty-five dollar a month law office, or a ten thousand dollar a year palace, that show dignity and respect for himself and his profession. Efficiency, not exhibitionism, should be stressed. If anyone should be an example of punctuality, it should be the lawyer. A lawyer should not be late, whatever the excuse.

Now, how can we improve our personality? Is it possible? I do not know. A great judge sitting in our Federal court, says you cannot. He says you are born with personality and individuality and nothing can change it through life. I respectfully disagree. It seems to me that all of us can learn if we have something from which to learn. Dale Carnegie could not have sold six million books on personality to laymen otherwise.

What I have said might be very discouraging. Do you feel that trying cases is so difficult that you are going out to look for an easy job, such as ditch digging? You need not. None of us knew it all when we started, not one of us. None of us know it all now. We learned the hard way. We made every mistake I have talked to you about and many more. We take home our troubles, doubts, lack of confidence in ourselves, and they grow larger and more formidable as the night progresses. Sometimes we believe a license to practice should be denominated a license to worry. I do not think a client realizes how much we worry in our over-time he does not pay for, in the middle of the night when every stomach ache seems a burst appendix, every legal slip seems to mean your legal career is ended.

There is no open season of success in our profession. We all have our periods of elation and depression. I was talking to an ex-judge, a man well known at the trial bar, over seventy years old, and he was bemoaning his fate. He said, "I have lost nine cases in a row, and what's more, I seem to have lost my grip. I suppose I will have to quit and let the younger men take over. I am through." Four days later he was awarded a fee of $1,250,000 in a stockholders case. So, if a man over seventy can worry about having lost his grip, you younger fellows must not worry if you lose a case.

Lawyers have a way of identifying themselves with their cases. Trial lawyers usually are given the most difficult cases to try. That is why they are retained to try them. One side must win in every lawsuit. There is much to be said on both sides. Knowing that there is at least 50 per cent chance of winning and 50 per cent chance of losing, you would think that would give us some satisfaction, help make us stop worrying. Does it?

The good lawyer is unable to avoid the inevitable post mortem. Did he make a mistake by putting his client on the stand? Has he forgotten how to cross examine, judging from the example of the effort he made against his adversary? Maybe he should have moved on the ground of newly discovered evidence. Was there evidence he could reasonably have found out had he been diligent in preparing the case? Had he been brusque with the court? And so on. Lawyers always blame their own inadequacies, seldom the lack of merit in a case they handle. But the good lawyer has a way of swinging back with courage renewed and the resolve to learn and benefit from the mistakes of the trial just ingloriously completed. Fortunately, the next case is waiting, and here is a golden opportunity to prove to himself and the bar that he is still good, instead of indulging in vain regrets. When the morning comes the sun is shining again, and the lawyer walks out to engage in the next legal battle exactly as though the case he had just lost had never been tried. Yesterday never was; tomorrow may never come; today we have a case to try, we lawyers, thank God.

In a brief ceremony President Ross and the Bar recognized those past presidents of the Association who were present. Former President Travis was congratulated upon having practiced law for sixty years and having never missed but one meeting of the Association.

The report of the Resolutions Committee, as given by its Chairman, Mr. Homer Pittman, consisted of a resolution condemning government by Executive Treaty with foreign nations beyond constitutional provisions. This resolution may be found in Appendix A. Mr. Edwin White then addressed the meeting concerning a proposed amendment to the Mississippi Constitution, which amendment is to be voted on next November. His address is given in Appendix B.

Mr. Phil Stone was elected by acclamation to the House of Delegates of the American Bar Association. Following his nomination by Mr. Bidwell Adams, Mr. Charles B. Snow of the Hinds County Bar was unanimously elected the next president of the Bar Association. Mr. Boyce Holloman was elected by acclamation as first vice-president of the Association following his nomination by Mrs. Zelma Price. Mr. Kenneth Franks of Philadelphia, Mississippi, was presented as the selection of the Junior Bar Section for second vice-president of the Bar Association.

The election of commissioners by the individual groups from each district showed the following results:

W. C. Sweatt, Sr., First District
William G. Hewes, Second District
Robert B. Smith, Third District
Jerome S. Hafter, Fourth District
William R. Ford, Fifth District
Everette G. Truly, Jr., Sixth District
Shelby Rogers, Seventh District
J. O. Hollis, Eighth District

M. E. Ward, Ninth District
T. Marvin Williams, Tenth District
J. C. Fiduccia, Eleventh District
W. A. Beard, Jr., Twelfth District
R. C. Russell, Thirteenth District
Lena Zama, Fourteenth District
Earl R. Wilson, Fifteenth District
John Holloman, Sixteenth District
Herbert Fant, Seventeenth District

Gulfport was again chosen as the site for the next meeting of the Mississippi State Bar. The convention then adjourned sine die.

PROCEEDINGS OF THE SIXTEENTH ANNUAL MEETING OF THE

JUNIOR BAR SECTION

Held at Biloxi, Mississippi on the 19th of June, 1952

The assembly was called to order at 1:30 P.M., June 19, 1952, in the Buena Vista Hotel in Biloxi, Mississippi, by Mr. Kenneth I. Franks, President of the Junior Bar Section.

The invocation was delivered by Rev. Edward A. DeMiller of Biloxi.

An address of welcome was delivered by Mr. Thomas N. Roberts, Jr., of Biloxi, and was responded to by Mr. William Luckett of Clarksdale.

The Convention then turned to the consideration of various committee reports and recommendations. The first of these was the report of the Memorial Committee, which was given by its Chairman, Mr. Charles B. Henley. The combined report of the Junior and Senior Bar Memorial Committees appears in Appendix A.

The next order of business was the adoption by the Convention of the report of the Committee on Unauthorized Practice of Law, which was given by Mr. Owen Palmer, Jr., of Gulfport. This report may be found in Appendix A. Mr. Robert G. Nichols, Jr., gave a report to the Convention on the Ohio Valley Regional Meeting of the American Bar Association.

After an introduction by Mr. Ed McIntyre, Jr., the following address was given by Mr. Charles B. Snow of Jackson:

PROFESSIONAL ETHICS FROM THE PRACTICE STANDPOINT

Charles B. Snow

I am grateful to you for the privilege of appearing here on your program this afternoon. At home I always welcome an opportunity to meet with the Junior Bar Association. It gives me an opportunity to mingle with the younger members of the Bar. I wish to take this occasion to congratulate the Junior Bar Association on the fine work which you are doing for the Bar Association and for the Bar generally in the State of Mississippi.

As a matter of truth and fact, it is with mingled feelings of pride and humility that I appear before you this afternoon. The subject which has been assigned to me affects the whole course of professional conduct. Of necessity, one must be humble when he considers the vastness of the subject, and the complex and conflicting theories and ideas about it which have been expressed by great philosophers and legal thinkers throughout the ages. I cannot but be proud, however, of the fact that you have deemed me worthy to address you on the topic assigned to me. I doubt that I can

say anything to you that will be new or novel or suggest any original approach or attitude to the subject. Most of what I have to say has been said before, and doubtless, said better, and I am sure that some of it may be said again in the future. When your distinguished President extended to me the invitation to appear on your program, he stated that what your Association would like to have was a discussion of professional ethics from the practical standpoint and from a lawyer who had practiced over a long period of years. With this suggestion in mind, I shall attempt to present to you some of my personal conclusions which have resulted from experience and observation.

I was admitted to the Bar of the State of Mississippi thirty-six years ago, and have practiced the legal profession actively in this state since that time.

When we talk about legal ethics, I sometimes am reminded of the story where a cashier in a department store was asked by a customer what she did when a customer went off and left his change. She answered that she did all she could to attract his attention by beating on the counter with a dollar bill.

Ethics generally, as distinguished from professional ethics, may be termed a systematic study of the ultimate problems of human conduct. Ethics is not concerned mainly with bare facts but with values and estimates. Ethics is not primarily occupied with the actual character of human conduct, but with its ideal; not so much with what human conduct is, as with what it ought to be.

When we consider the subject of professional ethics, and particularly as the same relates to the legal profession, we are dealing with moral principles, moral causes and moral practices. It is a system or code of moral conduct for members of the profession. In my judgment, if you find a lawyer who in his dealing with his client and the court follows the dictates of his conscience and does that which his conscience tells him is right, and in dealing with his fellow lawyers follows the Golden Rule, you have found an ethical lawyer in the true sense of the word.

The history of mankind is a story of a continuing quest for justice. It is the search for a measure of good and bad in the most important instrument of social control; that is, the law which governs men's actions. Ethics is a study of the meaning and application of judgments of good and bad, right and wrong, and every final decision of law involves an ethical judgment. When we say, for instance, that a given law is bad, that a judicial decision is wrong, or that the Constitution ought to be revised, we are passing judgments. The value of these judgments cannot be established without some measure or standard to which they can be compared.

In considering our professional obligations as lawyers, we cannot lose sight of the important truth concerning the practice of law; that is, that it is a profession. It ought to signify for its followers a mental and moral attitude apart from the multitude. Lawyers are entrusted not only with the care and management of important affairs of business, but often with the very life and liberty of a client. The handling of these affairs depends not

alone upon the skill, judgment and ability of the lawyer, but no less upon the integrity, honor and devotion to duty of the lawyer. Under such circumstances, it is clear that the lawyer should not only possess skill, learning and ability, but he should likewise possess the highest degree of honor, integrity and fidelity.

I have made the observation that when the State of Mississippi licenses a man or woman and permits such person to engage in the practice of law in this state, that the word "lawyer" printed on the office door should be a guarantee to every person in the state that he can enter such door and there receive reasonably capable professional service and absolutely honest and diligent service.

I am informed that there are some who take the position that the law is not a profession, but that the same is a highly competitive business, and that since the same is a business, the persons engaged therein are free to engage in any practices indulged in by business men generally, and that lawyers should be governed by no special grades of moral duty or obligation. I take issue with such argument. I align myself with the theory that lawyers should not adopt lower standards of conduct, but, on the other hand, business generally should raise its standards of conduct.

We might just as well be realistic concerning this question of ethics. There are in reality three standards: (1) the hope of the profession; (2) the practice, which unfortunately does not always measure up to the hope; and (3) what will get by with the courts. I think that the profession generally agrees that the last suggested standard is not worthy of serious consideration. Unfortunately, the first standard is illusory, because in fact it does not exist. As a practical proposition, therefore, it appears that we shall have to accept the middle standard. Regardless of this, however, let me venture to suggest to you that we should as lawyers constantly strive for the ideal standard; that is, for the hope of the profession. In cases of doubt as to what is proper conduct we should always decide in favor of the ideal standard of conduct.

I believe it was Browning who said, "A man's reach should exceed his grasp, else what's a heaven for?" The fact that perfection may be impossible of attainment does not render the seeking and striving therefor undesirable.

Perhaps these preliminary remarks I have made are academic and foreign to my assigned subject. Nevertheless, I feel that I owe it to you to impress upon you that it is imperative that you give to the public and your clients not only all your skill, ability and industry, but the highest possible honesty, integrity and fidelity to duty.

And let me impress this upon you. High character and ethics in the practice of your profession pay off in dividends in the end. The public soon finds out the lawyers who practice their profession cleanly and honestly and who deserve and receive the confidence of the courts, and these are the lawyers the intelligent members of the public seek out and entrust with their important affairs.

Do not get me wrong. The law as a whole has always been an honorable profession. When we think of the vast number of opportunities which are placed in the hands of the members of the legal profession for the betrayal of trusts and the few and remote instances in which such trusts are betrayed, I say to you that the record made by the lawyers is remarkable. I doubt most seriously if an equal number of persons could be taken from any profession and be confronted with the same opportunities and come forth with a better record.

There are many Don't's and many Do's which I could call to your attention in the practice of our profession. Much of the criticism which is heaped upon members of the profession by their clients is occasioned by carelessness on the part of the lawyers and not by any intentional violation of the code of ethics of the profession or by dishonesty. I have known of lawyers who simply would not answer letters of inquiry from their clients. They had attended to and were attending to the client's business diligently and capably. The client was not informed with reference thereto and justifiably heaped criticism upon the lawyer.

Another instance of carelessness which brings criticism down upon the heads of the members of the legal profession is this. I have known lawyers to collect money belonging to their client and immediately place it in the bank in a special account with no intention of using it, and fail through carelessness for several days to remit to the client. This is terrible practice and brings justifiable criticism down upon the lawyers. I have had an inviolate rule throughout my thirty-six years of practice to never let the sun go down on me with a client's money in my possession without instructions from him to hold it.

There is one thing a lawyer has got to learn in order to be successful. No matter how good a lawyer is, he is not going to succeed in the practice of his profession unless he knows how to get some law business. I use the word "get" advisedly. If a lawyer is to live and support his family, he has to "get" some law business. Very seldom is it handed to him. There are some who consider that the getting of business is the only consideration involved. How they get it is of no concern. Those who subscribe to this view advocate a system of free-for-all solicitation of legal business by themselves, but not on the part of the other fellow.

There is a clean ethical way to get business. Some argue that the so-called ambulance chaser and the lawyer who makes business and social contacts where business is available are brothers under the skin. This argument in my opinion is biased and prejudiced. The smart, ambitious lawyer is as busy building up his contacts at the right time and in the right manner with the view that such contacts will ultimately promote his business as he is in attending to business after he gets it. If he does not do this, he is letting grass grow under his feet, and there is not a thing wrong in so doing. No student of legal ethics will condemn such practice.

Of course, it is unnecessary for me to state to you that the canons of ethics of our profession and common sense both prohibit solicitation of

professional employment in any manner not warranted by personal relations. It is clearly unethical to endeavor to procure legal employment through runners or press agents of any kind.

Likewise, it is unprofessional and violates the code of ethics of our profession for a lawyer to volunteer advice to any person to file a lawsuit. It is unprofessional for a lawyer to seek out defects in titles and to seek employment in connection therewith, or to seek out persons who may have grounds for legal actions in order to secure them as clients.

Again, I say to you that to violate these rules of ethics does not pay off in the end. Back several years ago I was in a barber shop in the city of Jackson. The barber referred to a lawyer, a resident of Jackson, who was then young in the profession, but is now one of the most successful lawyers in the State of Mississippi. The barber said about this lawyer that he never would amount to much; that he would not go out after business; that he ought to be like so and so, another lawyer at the bar who was right out after business all the time. Incidentally, the barber's judgment was not good. The first lawyer he referred to is, presently one of the leading lawyers in the State of Mississippi. The second lawyer he referred to is still of necessity openly soliciting business and struggling to make a living.

There are one or two decisions of the Mississippi Supreme Court which I think it well to call to your attention. In the first case a firm of attorneys made a contract with a client to sue a defendant for damages for tort. In the contract of employment it was provided that the attorneys would bear all expenses of the suit except court costs and the expense of expert testimony. The client settled his case with the defendant and disregarded his contract with the attorneys. The attorneys sued the client for their 40 per cent interest in the recovery. The client demurred to the bill of complaint, and as one of the grounds of the demurrer contended that the contract of employment was void because in violation of the Mississippi statute[1] which prohibits any attorney from giving or promising to give a value consideration to any person as an inducement to placing a demand of any kind in his hands for the purpose of bringing suit. The Supreme Court held that the demurrer should have been sustained, and that the agreement on the part of the attorneys to bear the expenses involved was an inducement given to obtain employment, and, therefore, void.[2]

Another interesting Mississippi case is a case where a private detective claimed to have brought a client's case to the attorneys, and agreed that in consideration of the attorneys' promise to pay him one-third of their contingent fee, the detective would work up and furnish evidence for the plaintiff and investigate the jurors serving at the term of court at which the case was tried. The Supreme Court held that the contact of employment was void and unenforceable.[3]

One practice which I have endeavored to follow, and which I believe you will find to your advantage is that if it is possible to avoid it, I never

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[1]Miss. Code § 8684 (1942).
[2]Harreld v. Daniel & Greene, 151 Miss. 761, 118 So. 899 (1928).
[3]Whelchal v. Stewart, 192 Miss. 241, 5 So.2d 418 (1942).

file a suit against anybody until I have advised him of it and afforded him an opportunity of discussing it with me. In the first place, this will afford a prospective defendant an opportunity to compromise and settle the claim without necessity of litigation. This is always advantageous to all parties. But just as important, on several occasions in my experience when I discussed a prospective suit with a defendant, I learned the facts, which I was able to verify, which prevented me from bringing litigation which I could not have successfully prosecuted, and which would have resulted in loss and expense to my client.

As important as it is to the lawyer to get business, it is equally as important that he reject employment which he should not accept. Of course, no lawyer should accept employment in which it is expected that he will resort to unethical or improper practices. But the situation which most often arises and to which I am here referring is cases where the acceptance of employment would require the attorney to represent conflicting interests. A lawyer represents conflicting interests when in behalf of one client it is his duty to contend for that which duty to another client requires him to oppose. It is a simple and obvious principle that no man can well serve, either directly or indirectly, two or more masters. Lawyers who habitually represent insurance companies are often confronted with this situation. Quite often an insurance company covers an automobile involved in a collision. A suit grows out of the collision and the insurance company comes in and employs its regular attorney. A few days thereafter the insurance company which covers the other automobile involved will show up and tender him employment as its regular attorney. Of course, there is nothing for the lawyer to do except explain the situation to the latter company and let it seek other counsel.

I urge you strongly to be alert and vigilant to scrupulously avoid the representation of conflicting interests, for if you do find yourself in this position, you not only fail in your duty of undivided fidelity to your client, but in addition destroy the respect and confidence of all involved.

The duty of undivided allegiance to the client may require that the the attorney reject subsequent employment by others. The ethical principle involved forbids subsequent employment in matters adversely affecting any interest of the client with respect to which confidence has been reposed. Cases have arisen where an attorney has been offered employment by new clients which would in effect nullify and overthrow work which he had theretofore performed for others. The acceptance of such employment is universally condemned.

There is another thing I want to impress upon you. Unfortunately, some lawyers are too impetuous in filing suits. Try to settle your case if you can before suit is filed. You will better represent your client by doing so. After the suit is filed do not let the prospective glory of advocacy overcome your judgment. The art of settlement in some cases may be more important than the art of advocacy. Remember, the majority of cases filed are never tried. It is a primary duty of the lawyer to moderate the emotions of the parties and to encourage an amicable compromise. This duty is outstandingly important where controversies arise involving members of a family or between parties who may continue business relations. A com-

promise often gives both sides involved a feeling of victory, and this alleviates the bitterness of the controversy and makes the continuance of normal relations possible.

But lawsuits are inevitable in the practice of law. The ethical lawyer has definite duties and responsibilities in regard to the trial of a lawsuit. He must be fair and honest with the court. He must be fair and honest with himself. It is definitely not the duty of a lawyer to win his client's case at all costs. The client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, but the duty of the lawyer is to be performed within the bounds of the law and the ethics of the profession and not outside of them. The lawyer is bound to present his claim or his defense by all fair and honorable means, but not otherwise.

The ethical and honorable lawyer always treats adverse witnesses and adverse parties with fairness and due consideration. The lawyer should never permit himself to become a party to the prejudice or bitterness of his client in the trial of a case. Throughout the prosecution of the trial the conduct of the lawyer should be characterized by candor and fairness. Here, again, this practice will pay off. A juror is a human being and is inclined to get on the side of the lawyer who impresses him that he trying to be fair with and considerate of everyone involved in the lawsuit.

As an officer of the court, it is often the duty of a lawyer to act as a restraint upon his client. Employment of a lawyer does not require that he submerge his own conscience to that of his client. The lawyer should use his utmost endeavor to keep his client from doing injustice and insist that his client perform fully and honorably all his obligations. The lawyer not only advances the honor of the profession, but he promotes the interest of his client when he undertakes to have the client comply with the strictest principles of moral law.

I said in the beginning that ethics is primarily concerned with what conduct ought to be and not what it actually is. I think we should strive for the ideal standard. In cases of doubt you should always adopt the course which you are sure is right. There may be those who will tell you that the standards of ethical conduct are so vague and ill defined that you should give yourself the benefit of doubt and do the most expedient thing. I urge you sincerely not to adopt that course.

It is very important to young lawyers that they seek out the proper associations in the profession. In my professional career it has been my very good fortune to be associated throughout with lawyers of the highest standing in their profession. I had the privilege of practicing with the late George Butler for approximately twenty-five years. No finer character ever lived. I shall never forget when a short while after I formed a partnership with Mr. Butler I went in to talk with him about a matter which we were handling. At the beginning of the conversation I made the remark that I wished to discuss it with him, because I did not know whether or not it was right. He promptly interrupted me with the remark, "Charlie, if there is any doubt about it being right, let's not do it." That is the best course to follow, and the lawyer who follows it will in my opinion be an ethical lawyer.

I close my remarks with the closing sentence of Canon 32 of the *Canons of Professional Ethics* of the American Bar Association, where it is said:

> "But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen."

Thank you so much.

Most of the rest of the meeting was taken up with the giving of reports by various committees, which reports may be found in Appendix A. A report on the Second Annual Lawyers' and Certified Public Accountants' Tax Institute was given by its Chairman, Mr. Bruce Aultman of Hattiesburg. The report of the Annual Law Institute was given by its Chairman, Mr. Robert E. Perry of Jackson. Judge Rowland W. Heidelberg, Jr., gave the report of his Committee on Unethical Practice of Law.

The report of the Public Relations and Information Committee, as it was prepared by Chairman Thomas Bourdeaux, was read by Mr. Rowman Taylor, who offered additional remarks of his own. President Franks gave the recommendations of the Executive Committee.

President Franks adjourned the session.

THURSDAY, JUNE 19, 8:00

President Franks called the meeting to order. Mr. James Robertshaw introduced the noted writer Mr. Erle Stanley Gardner of California, who gave the following address:

COURT OF LAST RESORT

Erle Stanley Gardner

Mr. President, friends of the Junior Bar Section, for exactly twenty-five minutes, because part of this speech is being broadcast, I am going to try to tell you a little something about the work we have been doing in connection with the investigation of certain criminal cases. Then I want to take about ten minutes and talk to you about some problems of practicing attorneys. I have a horror of the prepared speech; in fact, I never make any. I simply stand up and get friendly with people and let it go at that.

Lawyers have probably the poorest press relations in the world. We seldom read anything about lawyers in print, good or constructive. People as a whole seldom understand the intricacies of the law business. The average individual is quite surprised to learn that so many attorneys do travel such large distances, and inconvenience themselves, to attend various meetings in order to enable them to do just one thing, to be of greater service in their communities in the profession they have chosen. I think if people generally understood more of the problems of lawyers,

and the manner in which lawyers individually prepare themselves to meet the problems, we would not need good press relationship, because the people themselves, by word of mouth advertising, would reverse the trend that exists today of always making jokes about lawyers and mothers-in-law.

The thing that I want to talk a little about tonight is what I might call the problem of proof. This is something that is coming very close to us in connection with certain work we have been doing. I think many of you are familiar with our so-called Court of Last Resort that was started in *Argosy* magazine about four year ago, when we began the investigation of certain people wrongfully convicted of various crimes, principally the crime of murder. We have started in trying to accomplish a definite purpose. We find as we get deeper and deeper into it, that it is a subject that has various ramifications, some of which are of the greatest interest to lawyers.

I just want to give you a brief history of what had happened during the twenty-five years or so that I was a trial lawyer. I was one of these fools who was always going out and fighting for the under-dog, against hopeless odds. I always wanted to go in and fight windmills. When I found a man who was penniless and friendless, I was always inclined to throw the economic aspects out the window and wade in. As a matter of fact you will find it a very peculiar and interesting thing, that the more unselfish you are in life, the more selfish good you accomplish. That is particularly true of the law business.

I was always inclined to go out and champion the cause of justice everywhere. Some of my exploits were rather colorful, and when Johnson was commissioned by the *Saturday Evening Post* to write a biographical sketch, one of the things he wanted to feature was this: I had to go out and champion the underdog. You can imagine what happened when a magazine with the circulation of the *Saturday Evening Post* came out and said, "Here is a lawyer who pays absolutely no attention to money involved, but goes out to champion the cause of the underdog." We proceeded to find there were more underdogs in the United States than we thought existed. Mail came pouring in.

One of these cases was of a man in the death cell, scheduled to be executed in about ten days. It was a case in which there was a dying declaration pointing to the man, eye-witness evidence, circumstantial evidence, absolutely everything. The man was penniless. It was a sex murder, very revolting. He stood no chance whatever. He was convicted and sentenced to be executed. Then an attorney who was simply convinced that the man might not have had a fair deal entered the case and started investigating. Finally, he wrote me and asked me to come into the case. I decided I would, and asked him for a copy of the transcript. A very peculiar thing happened that I must emphasize, because it is indicative of the same things we are constantly finding. The man tried to build an alibi at the time of the crime. The alibi had broken down for the exact fifteen minutes the crime was being committed, which was significant, and probably instrumental in the jury's not giving the man very much consideration. He was promptly sentenced to die for first degree murder. In our state, and I think in most of them, the verdict of the jury determines the difference between a life sen-

tence and capital punishment. I started studying this transcript. I decided since everyone else had looked at it trying to build this alibi up I could forget it; I could take it for granted there was nothing to it. I came to the decision to start in simply looking at it, letting X represent the murderer, make a chart of distances, etc. Then a peculiar situation developed. The evidence in that case proved the man innocent beyond all reasonable doubt; not guilty, but innocent. At the exact time the crime was being committed (not at the time fifteen minutes before the crime was being committed), at the time when the murderer was standing in plain sight of eye witnesses, it was conclusively proven the defendant in the case was riding in an automobile with the father of the murdered girl. We were in a peculiar situation. There was nothing to be done legally. They had exhausted all legal remedies, *habeas corpus, coram nobis, coram* everything else. But I wrote a letter to the justice of the supreme court, the attorney general, and the governor, and pointed out the situation that existed in the transcript.

That started quite a bit of discussion. Some months later when I was down in California with the owner of *Argosy* magazine, this came up. He said, "Erle, if you ever find another case like that, *Argosy* will donate enough space to let the public know, because we feel the public is the court of last resort in a country such as ours." Those cases did begin to come up. I am going to hit the high spots, to show you something of what happened, how this organization came into existence. We realized at the start, when we started to publish something on a case that first came up, a murder case, where a man had been in prison in the State of Washington some fifteen years, we couldn't simply come in and say, "We think this man should be turned loose, or pardoned, because Erle Stanley Gardner thinks he didn't do it." We had to have something that would give the magazine articles definite, compelling attention.

We decided to get a Board of Experts. We wanted the best men we could get, men so successful in their professions that they needed no individual publicity. We wanted men who could donate their time, because the minute a question of a nickel came into it, we realized it would stultify the whole thing. We wanted men so skilled in their profession that when they gave a verdict, enough weight could be attached to that verdict that people would feel there was some reason for them to ride along in this investigation, looking over our shoulders. We were trying to take readers and make them detectives. We got Dr. Lemboybe Schneider, who is an attorney at law and a doctor, an expert legal investigator. He has handled hundreds of murder investigations, big homicide investigations with which many of you should be familiar.

As we examined transcripts we kept getting into situations that interested me as a trial lawyer very much because we began to find case after case in which there had been a miscarriage of justice. We popularized these cases in *Argosy*. We didn't know what the outcome was going to be in any individual case. We took cases that looked good to us, where there was a possibility of wrong conviction. We simply took the readers right along with us, letting them look over our shoulders. That, of course, is a matter that has no bearing on what I am trying to cover here tonight.

What I am trying to get at is the reasons for miscarriage of justice,

when we found they existed. In most cases where the proof indicates a man is guilty, he is guilty. But there are cases where there is a peculiar combination of circumstances that results in the wrongful conviction of the innocent. We find we get certain mistakes that are made quite frequently in the practice of law. In fact, I began to get a little worried, and in the last few months I began going to court listening to cases in which I had no interest whatever, just in order to see where the practice of law was deteriorating. On certain points, I am glad to say, it was not.

The cases we encounter are the spectacular cases, but there are two or three things we have found. We have found that the attorney in the zeal of cross examination, as he becomes anxious and is trying to get at a certain point, with his pre-conceived theory of the case, will quite frequently uncover a remark by the witness that shows the entire testimony of the witness is false or mistaken, or there is some reason that the theory on which the case is being tried is wrong. The attorney may not notice it because he is so intent on getting the man to say Yes or No to a certain question, the witness starts trying to weave away from it.

We find, particularly, ignorance on the part of the legal profession generally in the strides that have been made in legal medicine. Every attorney owes it to his client to study it more. I am sorry Dr. Schneider is not here tonight. He is a specialist in it. Indexed here, I notice a case dealing with a burned body. I was talking to Dr. Schneider when he mentioned what could be determined from burned remains of a man found in a building. He may have burned almost to a cinder, but certain things happen. For instance, in every burning there is carbon monoxide, and if the man was living at the time of the burning the blood took on a very red hue. Furthermore, it will absorb enough carbon monoxide, determined by chemical analysis usually in the lungs and liver, to determine. In all buildings, if there has been inhalation, there may be little burned particles of soot in the bronchial passage. It is very interesting to note all of us have certain layers of subcutaneous fat, some more than others. It there has been a struggle prior to the time the fire started and a blow is struck on the fleshy part of the body, certain of those little fatty particles are liberated and go into the blood stream. Those fatty cells are absorbed through larger capillaries of the blood stream and circulate until they get into smaller capillaries of the lungs. There they congest, because those are smaller, and there is no opportunity momentarily for them to break through. Therefore, if a man has been engaged in a struggle prior to death, it is almost certain a pathologist can find enough fatty cells in the tissues of the lung that that fact can be determined. Those are a few of the things that can be determined from a burned body.

As I began to study this subject more, I began to understand my abysmal ignorance. In fact, I have told folks in talking to them I am mighty glad nobody dug out some of my old transcripts and started reading them. Quite frequently we overlook some little point, partly because we are too close to it, and partly because we don't have the legal-medical background. I say "we" as the profession generally, the people here tonight. One reason I am talking to you folks on this is that we have a lot of attorneys coming up who are not interested in many of these

things, or who don't know about some of these things; people who are not here, who have not taken enough interest in their profession to try to attend these conventions to improve their legal background.

One of the things I want to mention briefly is the question of identification evidence. It isn't generally known the extent police find that witnesses will identify a man as being the culprit, when it turns out afterward he couldn't possibly have been the culprit; therefore, nothing is said about it. You quite frequently read in a paper about somebody having made a partial identification. There is no such thing as partial identification! A man can either identify a man he saw at the time, or he cannot.

I am going to touch on identification briefly, because in the first case we had five men who had identified the man convicted and spending his life in the penitentiary, as the man they had seen running away from the scene of the crime. Two witnesses testified the man had confessed to them. Two witnesses testified property belonging to the murdered man had been found in his possession. When we finished with the case, we proved conclusively that that man did not commit the murder, didn't know anything at all about the murder. Furthermore, it then turned out that the *Seattle Times,* entering the case, had received matter from a reader giving the clue enabling them to trace the murder weapon to an individual we will call John Doe. They built up quite a circumstantial case against John Doe. When we went through the record, we found every one of the five witnesses who identified the convicted defendant two years later as having been the man running from the scene of the crime had positively identified John Doe at the time of the murder, but the police had turned him loose because they thought he had an alibi. Now that is the type of thing we are running into in connection with some of the problems we are studying.

I say to you, ladies and gentlemen of the Bar, and particularly it is the responsibility of the younger members of the Bar, that we have to watch the question of proof, and we have to study the question of proof. The problem of proof is a big problem. Now that does not mean that we should expect juries to refuse to convict in proper cases; but it does mean that we should have a better grade of proof, better trained investigators, and those investigators have to be trained at the expense of the people. You can't expect a man who is the chief of police or under the chief of police, to go ahead and take a job at the salary he gets and then give himself the training. He has some training, usually, when he takes office, but it is up to the taxpayers to send these men to conventions and schools; not all of them, but the top officers, so they can come back and form a nucleus, the core of investigative work, to spread out through the other branches, so they will know what proof does. It is unfair to juries to ask them to convict or liberate a defendant simply because of the fact there is no proof. It is only a question of surmise, we think the probabilities are thus and so. Yet, as attorneys, we find that happens quite frequently. That concludes the ideas I wanted to cover briefly on what we have done with the court of last resort.

There is another point that I want to touch on a bit, the psychological relationship of attorneys and clients. It is an interesting thing, purely from the standpoint of the profession. I have been able to draw lessons about the

psychology of the client-attorney relationship from experience I once had in the practice of salesmanship. I know I am talking on a delicate subject, so all I can do is tell you what happened with our group. We started in and decided that the custom of the profession was to get a retainer, if you could. More frequently than not, that was dispensed with. There was allowance to cover cost, then we went ahead and performed the legal services. Then the client came in at the conclusion of the case. We wrote him a little note suggesting he drop in. He wasn't a fool, he knew he was being brought in to discuss the question of fees. We had to discuss the question of fees perhaps two or three years after the original employment, quite frequently a matter of months. We found then, in many of our cases, the client had an entirely different idea of what constituted adequate compensation for our services. We were in the position of letting a lot of it go, or insisting on the point. In any event, our last contact with our client was an adverse relationship. So we decided, now if a man wants to buy a Cadillac automobile, he would be rather in a peculiar position to go in the Cadillac agency, and the manager say, "Come right in. Sit down. Certainly, go ahead and take that car. We will take care of you, take your old car in. We will keep you posted on what is going on. Then when the old car is worn out and you have no more desire for it, you come back and we will discuss what it costs you." That, generally, is what the attorney is doing. The time to sell anything to a man is when the client is most anxious to get services. The time when he is most anxious is when he first comes in to see the attorney. So we were wondering if we could talk to clients, "All right, Mr. Jones, how strong do you want to go in this case? Strong enough to win it?" "Of course, just tell us what that means." "We are in a profession selling our time. That is where we make our living. We have office overhead, costs, etc. We don't want to sell you any more than you want." "Tell me how much it will cost." "If you go to the Supreme Court on appeal, it may cost you quite a bit. If we settle the case it won't cost you much. If we get a verdict in the lower court of the amount, and that is not appealed, it will cost you so much." Then write a letter confirming the conversation. We were surprised to find how well it worked. When we wrote them at the termination of the case to come in and settle up, they knew about how much they were going to have to pay, and they knew it was satisfactory to them and to us. Instead of our last relationship being adverse, there was nothing for them to talk about except what a heck of a good attorney we were to go in and win the case, and we talked about what a heck of a fine attorney we are to go in and win the case. No friction at all. We got along in the most beautiful harmony you can imagine. In addition to the immediate advantages, there are public relations benefits which we lawyers certainly need.

Thank you.

Following the above address the floor was opened to questions addressed to Mr. Gardner. A lengthy question-answer discussion period ensued, part of which consisted of an informal debate between Mr. Gardner and Mr. Cutler on how far a lawyer should go in representing his client.

In the business session that followed President Franks appointed Mr. Joe Gillespie, Mr. Phil Luckett, and Mr. Tom Barnett as the Election Committee. Mr. Ernest Graves was asked to assist the Election Committee.

The next order of business was the election of officers. The following were duly elected:

Mr. R. G. Nichols, President
Mr. Overton Currie, Vice-President

Executive Committee:

Brinkley Morton, Northern District
William S. Turner
William O. Luckett
W. E. McIntyre, Central District
Rowan Taylor
Herman Glazier
George Maxey, Southern District
Denton Bibbs
Harold Cubley

Second Vice-President recommended to Senior Bar:
Mr. Kenneth Franks

The meeting of the Junior Bar Section then adjourned sine die.

APPENDIX A

COMMITTEE REPORTS

REPORT OF COMMITTEE ON AMERICAN CITIZENSHIP

The work of the Committee on American Citizenship is nation wide in its scope, and, as sponsored by the Mississippi State Bar, it is of course state-wide. As State Chairman of the Committee on American Citizenship (by virtue of the position that I hold on the Supreme Court) I am very much indebted to Mr. Sidney A. Smith, Jr., of the Hinds County Bar, for assembling data and preparing the first part of this report.

He observes in this report that the duty of a citizen to his country, state and locality, takes many forms, among which are participation in the various sorts of civic activity for the betterment of the community in which he lived and for the discharge of his duties to his state and country. During the past year the lawyers of the Mississippi State Bar Association have discharged this duty and responsibility in a commendable way. Because of the fact that much of the work of the Citizenship Committee is among the young people, the reports are incomplete because of the work of many high school students, which is still going on. However, he states that we are able to report that thirty-seven counties have sent in reports to the State Chairman. These reports show that a total of 143 lawyers have made 193 speeches on citizenship during the time since our last meeting here. This compares with 100 lawyers making 130 speeches on citizenship during the previous year. He concludes that it is fair to estimate that well over 300 lawyers over the state have participated in the making of such talks and that over 400 talks on citizenship have been made.

The Circuit and County Judges are reminding every court room audience, and the Circuit Judges in their charges to the Grand Jury are emphasizing the responsibilities of citizenship in this country. It is shown that the lawyers are active in local affairs, and all sorts of community projects and charity drives for funds, and that they are the leaders in their community.

The lawyers in some of the counties have sent in reports as County Chairman, and I call attention to a few of these counties. Winston County had 16 lawyers making 16 speeches on the subject of citizenship. Bolivar County had 16 lawyers making 18 speeches on the subject, one being made in every consolidated school and one at the Delta State Teachers College, discussing the Constitution, the evils of Socialism, and the voting rights and privileges of the citizen. Jones County had 8 lawyers making speches and radio addresses, for a total of 15 speeches. Coahoma County had 8 lawyers making 10 speeches, and three more counties had lawyers making 10 speeches each.

Your Committee recommends that the Mississippi State Bar Association continue to sponsor the work in which so many lawyers have devoted their time and talents in encouraging the making of better American citizens.

Respectfully submitted: Harvey McGehee, Chairman.

REPORT OF THE BUDGET AND FINANCE COMMITTEE

At last year's meeting of the Bar Association when fiscal matters of the Association were reported and discussed, it was apparent the $5.00 dues being paid by the members of the State Bar were far too low to satisfy the demands brought about by the growth of the Bar, its ever increasing functions and improvements, and the mounting pressures of inflation. This gave rise at the 1952 session of the legislature to a justified increase of the bar member dues from $5.00 to $10.00 and thus made it possible for your Budget Committee to make the recommendations herein, which, at least in part, gratify the added expense demands long upon us.

The Budget and Finance Committee this year has had to revise the entire budget in all of its aspects because of this increased revenue anticipated by reason of the recent legislation. Heretofore the Budget Committee has had the benefit of the experience of the previous year, but now we are without an exact precedent to formulate the budget for the ensuing year. In each instance the Committee has studied the requests made by various committees and subsections of the Bar at the meeting last year in anticipation of the increased revenue. It will be next year before the Budget and Finance Committee will have the benefit of experience in budgeting the various items.

It is anticipated that the income for 1952-53 will be $17,000.00, or an amount twice that expended through the budget in previous years. The audit of Dick D. Quinn and Company for the year ending May 15, 1952 has been invaluable in assisting the Committee to increase budget items which have shown an insufficiency for the year just ending. Provision has been made to adjust these allocations and to provide for an increased activity of the various committees. The Committee realizes that the Bar functions through the work of committees. To encourage attendance at committee meetings it has therefore provided sufficient funds with which to pay travel expenses for each of the committees and commissions.

The Committee recommends the adoption of the following budget for the year 1952-53:

Office Expense		$ 1,800.00
Commissioners' Expense		900.00
Junior Bar Section		1,000.00
Annual Meeting	$	300.00*
Committee Expense		750.00
Travel Expense for Study Committee		300.00
National Conference on Uniform State Laws		300.00
Expense Delegates to Judicial Conference		350.00
Secretary's Salary		3,600.00
Expense Secretary to ABA Convention		500.00
Contingent or Miscellaneous		300.00
Extra Office Help		1,500.00
Law Journal		4,600.00
Dues Conference of Bar Presidents (ABA)		50.00
		$16,250.00

*There is for the first time in the proposed budget an item of $300.00 for the Expense of the Annual Meeting. This item includes the expense that has to be incurred prior to the annual meeting, such as printing programs, ballots for commissioner, tickets, badges, etc. The expense of the hotel, speakers, orchestra, banquet, luncheons, etc., are paid for out of the receipts from registration.

The Committee has followed the recommendations in the adopted report of this convention last year. The office expense account was necessarily supplemented this year by action of the Bar Commissioners to meet current expenses. We have long awaited the opportunity to make a much needed increase in the salary of the Secretary. The amount which we have suggested in the budget, while more compensatory than before, is, for the information of the Bar, somewhat less than is paid Secretaries of other unified State Bars performing similar duties and having members in numbers approximately the same as ours. There are times when the work of the Secretary is overtaxing and it is recommended that an allowance be made for temporary office assistance in getting out the required notices of delinquency and announcements of general interest to the Bar. This recommendation is reflected in the budget item for Extra Office Help.

There appears also, for the first time in the budget, the dues of $50.00 per year which should be paid by the State Bar to the Conference of Bar Presidents of the American Bar Association. Heretofore the Secretary has been allowed expenses to the Secretaries Conference of the American Bar Association. The conference keeps our Secretary abreast of the work done by other Bar Associations in the administrative field and an increase of $200.00 is recommended for the Secretary's attendance at the convention to be held in San Francisco.

We urged the Commissioners to assist in reducing the number of delinquent members in their respective districts.

REPORT OF COMPLAINT COMMISSIONER

It is with a sense of gratitude and admiration of the Bar of Mississippi that I have the pleasure of reporting that comparatively few complaints were received against attorneys of this State during the term of my office as Complaint Commissioner. We had some twelve complaints filed with the Complaint Commissioner and, after investigation, most of them were found to be groundless and, accordingly, were dismissed.

All complaints have been disposed of, with the exception of two which are still pending and will be carried to conclusion in accordance with the established procedural requirements of the State Bar and as soon as reasonably possible.

While a few of said complaints raised serious charges against members of the Bar, all complaints have received attention and have been processed or are in the course of being carried to conclusion. In those complaints which appeared worthy of investigation, we have given notice to and opportunity to the attorney complained against to file a reply, and in all instances, with but one exception, we have received reasonably prompt replies and, in most cases, reasonable and satisfactory replies.

As a matter of interest to the Bar, I report that the vast majority of complaints received were based merely on the failure of attorneys to answer letters or to give reports to clients with the regularity or promptness which the client seemed to expect.

While it is undoubtedly the duty of the Bar to clean house in proper cases and whenever it is actually necessary, I am sure that the facts of this report, for the most part, constitute evidence of good public acceptance of the performance and fidelity of the members of the Bar, when it is remembered that only twelve complaints were filed against members of the State Bar consisting of 1993 members.

REPORT OF JUNIOR BAR SECTION

Assisted and advised by members of the Mississippi State Bar, the Junior Bar Section has had an active and successful year. Our Legislative Committee performed the most important function, and, by working in close conjunction with the Senior Bar Legislative Committe, sponsored and steered to ultimate passage several bills of vital import to the Bar and to good government generally.

Since the last meeting of the Bar, the Junior Bar section has assisted in the sponsorship of the second Lawyers and Accountants Tax Institute at Mississippi Southern College at Hattiesburg, Mississippi. The Junior Bar Section desired to see this Institute become a permanent annual affair. This year the Institute was under the able chairmanship of Bruce Aultman.

In September, 1951, under the chairmanship of Charles Henley, the Junior Bar assisted in holding the memorial service in the Supreme Court of Mississippi for the lawyers and judges who died during the year.

In December, 1951, the Junior Bar Section, in connection with the Jackson Junior Bar and the Ole Miss Law School, cooperated in holding the sixth annual Mississippi Law Institute. The program brought to the lawyers of Mississippi this year by the Institute, under the chairmanship of Robert E. Perry, Jackson, Mississippi, represented much time and effort on the part of the members of the Jackson Junior Bar. This group cannot be too highly commended for the outstanding service it is rendering to the lawyers of Mississippi by bringing to our state some of the more outstanding national personalities of our profession.

The committee on Unethical Practice of Law, under the chairmanship of Roland W. Heidelberg, Jr., of Hattiesburg, Mississippi, has worked out a plan for the control by local bar groups of unethical practices, in order that the merit of complaints may be investigated before being forwarded to the Complaint Commissioner.

The Junior Bar Section has cooperated with the Junior Bar Conference of the American Bar Association in attempting to disseminate correct information to the general public concerning the progress of our national defense mobilization efforts. This has been done by providing speakers for organizational groups, talks over the radio and newspaper articles.

The Study Committee of the Junior Bar Section, under the chairmanship of Charles C. Jacobs, has worked in conjunction with the Mississippi State Bar Study Committee, making recommendations for various changes in State Laws.

The Legislative Committee of the Junior Bar Section, composed of the Executive Committee and all members of the Junior Bar Section elected to the legislature, sponsored several measures of interest to the bar, notably the Mississippi Motor Vehicle Safety-Responsibility Act. Although a number of the measures were not carried to final passage, this committee, in cooperation with the Senior Bar Committee, made every effort to inform the individual members of the legislature of the merits of the bills the Bar was interested in, therefore more progress can be anticipated at the next session of the legislature.

The following are recommendations that the Junior Bar Section believes in and that should be carried out:

(1) The President of the Junior Bar Section should be made a member of the Board of Bar Commissioners under the Unified Bar Act.

(2) The Lawyers and CPA Institute in Hattiesburg and the Annual Law Institute in Jackson should be continued, and sponsorship by the State Junior Bar Section be placed on a permanent basis.

(3) The allotment to the Junior Bar Section should be raised to $1,000 in order that the more important functions of this group can be carried on with greater efficiency. The permanent and continuing work of the Committees on Public Relations and Ethics will require a larger expenditure than in the past.

(4) The work of the Junior Bar Committee on the Unethical Practice of Law should be carried on under the authority of the specific recommendations of the Committee's report, and every lawyer in the State should be informed of the contents of these recommendations, in order that they may be implemented by local bar groups.

(5) The title of the Unethical Practice of Law Committee should be changed to the Committee on Ethics.

(6) The incoming Junior Bar Executive Committee should work with the Bar Commissioners in an attempt to formulate a plan of closer coordination between the State Board of Bar Admission and the office of the State Bar Association.

Respectfully submitted: Kenneth I. Franks, President.

REPORT OF LEGISLATIVE COMMITTEE

The Legislative Committee consisting of 19 members was appointed on February 19, 1952. At that time the suggestions adopted by the Mississippi State Bar in 1948-1949 directed to the regular 1950 session of the legislature and the appendix to the report of the Study Committee for the years 1950-1951 were turned over to the Legislative Committee. The chairman of the committee discussed these matters with a number of members of the Legislative Committee, and it was decided not to attempt a meeting of the committee during the legislative session, which was then in progress, but to concentrate our activities on introducing all of the bills recommended by the Study Committee which we thought had a chance of passage. It appeared that time was then the important element, if these bills were not to die on the calendar or in committee.

We are therefore able to report that enactment into law of only the following legislation recommended by the Bar Association, to-wit:

Senate Bill 99. Provides that grandparents share equally with aunts and uncles in the estate of an intestate under certain conditions.
Senate Bill 309. Provides that in suits at law the defendant may plead his claim or demand against the plaintiff by way of counter-claim.
Senate Bill 322. Provides for contribution between joint tort feasors or persons jointly or severally liable to judgment.
Senate Bill 359. Sets attorney dues at $10.00 per year.

The last bill mentioned, which increases the Bar dues to $10.00, was absolutely necessary if the Bar was to continue to function, as the cost of all supplies, postage, salaries, and other items had largely increased.

The following bills which had been recommended by the Study Committee or approved by the Bar Association were introduced, but either died on the calendar or in the committee to which they were referred:

House Bill 483. Authorized circuit judges to hear motions to transfer in vacation under certain conditions.
House Bill 484. Provided a limitation where the due date of indebtedness does not appear on record.
House Bill 485. Provided that courts may permit defendants to bring in new parties as cross-defendants.
House Bill 486. Permitted the chancellor to perform certain acts in vacation.
House Bill 488. Provided for the settlement of pleadings and entry of judgment in vacation.
House Bill 489. Gave chancery courts general equity jurisdiction in removing disabilities of minority.
House Bill 490. Made the rules as to remoteness and against perpetuities applicable to personal property.
House Bill 491. In tax sale the redemption period for special improvements were reduced to two years.
House Bill 492. Provided for rule days within term time.
House Bill 493. Provided that any cause of action based upon any obligation of a decedent must be registered within six months allowed for probation of claims.
House Bill 494. Provided that certain action pertaining to land titles and motion to transfer may be heard in vacation.
House Bill 496. Provided for the devolution of title to property upon the death of persons where there is not sufficient evidence that such death was other than simultaneous.
House Bill 497. Provided for the descent and distribution of property upon the murder of another person by one who otherwise would be an heir or devisee of the decedent.
House Bill 522. Provided that appeals to the supreme court shall be made within 60 days after rendition of judgment or decree.
House Bill 571. Provided for taking depositions of parties and witnesses in in circuit and chancery courts.
House Bill 646. Established a system of auxiliary judges in state.

A good proportion of these bills were introduced by Mrs. Zelma W. Price, who is a member of this committee and is one of the representatives from Washington County, Mississippi. All members of the committee expressed their desire to cooperate in every way.

We recommend that the Study Committee continue its work, and that their recommendations be turned over to the Legislative Committee not later than October 1, 1953, so that all the recommended legislation may be drafted and introduced during the first week of the regular legislative session of 1954. This would greatly enhance the chances of passage of the recommended legislation.

The entire Legislative Committee could then be informed from time to time throughout the session of the progress that was being made, and the committee, or certain members thereof, could be called to Jackson from time to time to confer with their legislators or to explain the necessity of the passage of the recommended measures. The fact that the bulk of the recommended legislation died on the calendar or in the committee in the 1952 session was due not so much to lack of votes to pass the legislation as it was to lack of time to steer the legislation through the committee in each house and then to final passage.

The committee has had no meeting, as this was deemed unnecessary under the circumstances, but the majority of the committee responded by letter and concurred in this report.

Of the 49 members of the State Senate during the recent session 21 were lawyers, and 22 of the 49 as now constituted are lawyers, and almost as high a percentage of the members of the House are lawyers, so it would appear probable that worthy legislation actively sponsored by the State Bar Association would ordinarily be passed, if the concerted efforts of the Legislative Committee are exerted.

We understand that the Junior Bar sometime ago held a referendum on the question of prohibition and that a large majority of its members favored county-wide option with strict regulation. Very wisely the regular state Bar Association has never taken any action in this matter, as it is a question which any layman can decide for himself as intelligently as any lawyer, and this question is political and controversial. Your committee, of course, took no hand whatever in the recent fight in the Legislature over the liquor referendum, which is to be held on the date of the August, 1952, primary and will determine whether state-wide prohibition shall continue or whether a system of county-wide option shall be adopted.

We are further able to report that no legislation in any way inimical to the Bar Association or to the members thereof was adopted.

Certain members of the committee are strongly of the opinion that the Study Committee might consider further legislation to define and prohibit the practice of law in Mississippi by unauthorized persons.

We regret that we do not have a more favorable or comprehensive report to make.

Respectfully submitted: W. B. Alexander, Chairman.

REPORT OF MEMORIAL COMMITTEE (COMBINED REPORT OF JUNIOR AND SENIOR BAR SECTIONS)

On September 10, 1951, memorial services were conducted in the Supreme Court Room of the Capitol for all of the lawyers who had departed this life between September of 1950 and September of 1951. The proceeding were opened by Chief Justice Harvey McGehee who made some remarks on behalf of the Supreme Court. Justice Lee Hall made an address memorializing all the lawyers who had died during that period of time. Various members of the Resolutions Committee made remarks with reference to this matter, and the following resolution was adopted:

WHEREAS, since September of 1950, the Supreme Judge of all men has called before Him nineteen members of the Mississippi State Bar, and

WHEREAS, in keeping with the custom of our Association and the Supreme Court of the State of Mississippi, we here desire to pay humble tribute to the memory of our departed brethren of the Bench and Bar, and to have recorded upon the sacred scroll of the noble dead the following names of members of our profession:

Charles Anderson, Columbus
David L. Broadus, Purvis
James W. Butler, Jackson
Adam Monroe Byrd, Meridian
J. H. Caldwell, Charleston
Martin Sennett Connor, Jackson
H. H. Creedmore, Jackson
John Henry Culkin, Vicksburg
D. W. Holmes, Hattiesburg
Harry A. Hooker, Gulfport
Albert Schuyten Kirst, Jackson
C. J. Jones, Waynesboro
George W. May, Jackson
W. Wilford Lofton, Mendenhall
George P. Money, Gulfport
William Carey Powers, Holly Springs
Lemuel A. Smith, Holly Springs
J. E. Torrey, Fayette
M. Ney Williams, Raymond
Walker Broach, Jr., Meridian

WHEREAS, these deceased members of the Mississippi State Bar have rendered unto the people of our State and Nation their untiring and conscientious efforts, and have served with honor as attorneys and judges, devoting their talents faithfully to their chosen profession; NOW THEREFORE,

BE IT RESOLVED by this testimonial that the Mississippi State Bar, by and through its authorized representatives assembled before the Supreme Court of the State of Mississippi, on this the 10th day of September, 1951, join with the families and friends of these men in mourning the loss of those of our number whose lips have been forever silenced by the hand of the Almighty; that the loss of these men to our profession, to our State, and to our Nation is acknowledged with saddened and heavy hearts by those of us who remain to carry on in the shadows of their achievements; that we, as their friends and contemporaries, express our heartfelt sympathy to the loved ones of these our brethren of the Bench and Bar who have passed on into eternity; and

BE IT FURTHER RESOLVED that a copy of this Resolution be placed upon the minutes of the Supreme Court of the State of Mississippi and upon the permanent records of the Mississippi State Bar; and that a copy of this Resolution be transmitted to the family of each of our departed brethren whose memory we here today have paused to commemorate.

Respectfully submitted: W. A. Strong, Jr., Chairman.

REPORT OF THE STUDENT EDITORIAL BOARD OF THE *MISSISSIPPI LAW JOURNAL*

General

The lawyers of the State of Mississippi have just cause to be proud of the *Mississippi Law Journal,* their own official publication. It was organized in 1928 and is now in the process of completion of its twenty-third volume. It is one of the oldest and most respected publications of its type in the South and commands a great deal of respect and enjoys much prestige wherever it is sent. At the present time four issues per year are published and the circulation is approximately 2300

copies per issue. Subscribers include, except for numerous isolated purchases, principally, members of the Mississippi State Bar, students of the University of Mississippi Law School, and libraries throughout the United States and the world. At present, our international circulation consists of the copies sent to England, Canada, Argentina, Hawaii, Mexico, the Philippines, Puerto Rico, Union of South Africa, and Australia. Present subscription rates are $4.00 per annum for a regular subscription and $1.50 per copy if purchased separately.

Building and Facilities

The publication headquarters of the *Mississippi Law Journal* is located at the University of Mississippi and functions in conjunction with the Law School. It is situated in a brick structure immediately adjacent to the Law building on the campus of the University of Mississippi. We have only recently had the outside of the building painted and hope to have the interior repapered and painted as soon as possible. The building is quite small but remains adequate for the purpose which it serves. It contains an editorial and business office, a reception room, and three work rooms for the members of the staff. The staff members have desk space in the building.

One room is lined with shelves which provide storage space for the back issues of the *Journal,* which are kept on hand for the benefit of persons desiring single or additional copies of any particular issue. In addition, the building houses a library consisting of the *Mississippi Reports* and *Southern Reporter,* the *Supreme Court Reports,* the *Mississippi Digest,* the *Mississippi and Southern Digest* and the *Southern and Supreme Court Reporter* advance sheets, and the *Journal* itself receives the advance sheets of the entire National Reporter System. The *Journal* also receives the Reports of the New Military Court of Appeals and Attorney General of the State of Mississippi.

Personnel

Each issue of the *Law Journal* is edited by a student editor with the help of the editorial board, all of whom are select students of the School of Law who are selected by the Faculty on recommendation of the editor on the basis of scholarship, achievement, and editorial ability and work under the supervision of a faculty member, who in return is responsible to the Dean of the Law School.

Each student who satisfactorily completes the required work receives two hours academic credit and an engraved certificate upon graduation.

Law Journal *Index*

The cumulative index to Volumes I through 20 has been completed and is now available. The index can be obtained in two styles: gray paper binding at $3.50 per copy or black buckram at $7.00. Anyone desiring copies of this index should send his order to "Business Manager, Mississippi Law Journal, University, Mississippi, Box 146."

This index is arranged in the following manner: cumulative topic index of all leading articles, notes and comments arranged with sub-sections and cross-indexed; table of cases cited; table of statutes cited; author index to leading articles; title index to leading articles; topic index to notes; index to case comments by style and subject matter; index to Bar proceedings for the 20 years in which the *Journal*

has been published; index to the work of the Supreme Court; and a title index to books reviewed.

It is the belief and hope of the *Journal* that this index will be of great practical value to the member of the Bar. It makes available a convenient and efficient key to the many analytical articles contained in the *Journal;* it increases the value of your *Journal* by 100%.

Since the printing of the index was financed by the University of Mississippi, the proceeds from their sale have been paid into the University and will continue to be so paid until this advancement has been discharged.

Change of Address

In view of the fact that many members of the Mississippi State Bar have not been receiving their copies of the *Journal,* we have reworked and indexed the mailing list with the hope that this will better facilitate correctness of the circulation lists. We feel sure that some of our addresses are erroneous even now and we would like for you to assist us in perfecting our mailing system by encouraging the members of the Bar to send us all changes of address. The *Journal* is mailed by second class mail, and there is consequently no provision for forwarding. If the copy is not claimed by the addressee, it is returned to us at *Law Journal* expense. Since March of this year, we have had approximately 250 changes in our mailing list. It is urged that all members of the Bar promptly notify the *Jornal* of any change of address. Our address is "Mississippi Law Journal, Box 146, University, Mississippi."

The Journal *and the Bar*

The *Mississippi Law Journal* is designed with a three-fold purpose: (1) to publish articles of interest with the hope that insight will be given into certain problems and with hope that some of the confusion of the law will be clarified; (2) as an instrument for the teaching of the student participants legal research, analysis, and writing; and (3) as the official publication of any matter that the Bar deems pertinent to its cause.

The Editorial Board solicits and will be grateful for any suggestions from the Bar in regard to the publication of *Journal.* The members of the Bar are encouraged to submit subject matters which they deem to be of interest and, even more, each member is encouraged to write and submit for our consideration and for publication in the *Journal.* It is your publication and we hope you will help us to make it more helpful and beneficial to you.

Respectully submitted,

EDITORIAL BOARD

Cary E. Bufkin
Editor
B. B. McClendon, Jr.
Business Manager
Shirley J. Norwood
Note Editor
Charles N. Dean
Kelly McKoin
Case Editors
Robert H. Hodges
Book Review Editor

EXHIBIT "A" TO THE *LAW JOURNAL* REPORT

FINANCIAL REPORT OF THE *MISSISSIPPI LAW JOURNAL*

July 1, 1951-June 30, 1952

Receipts

Balance in Bank, July 1, 1951		$1,465.25
Appropriation, Mississippi State Bar		
Balance of 1950 appropriation		372.04
1951 appropriation		3,250.00
Law School Assessment		374.50
Sale of Back Issues		88.50
Sale of Subscriptions		182.40
Sale of Advertising Space		1,122.50
Index Sales		115.48
Miscellaneous		57.00
TOTAL RECEIPTS		$7,027.67

Disbursements

Printing:		
Volume XXII, No. 3	$ 671.73	
Volume XXII, No. 4	1,620.14	
Volume XXIII, No. 1	925.20	
Volume XXIII, No. 2	925.26	
Volume XXIII, No. 3 (est.)	1,650.00	$5,792.33
Postage and Box Rent		162.76
Stationery and Supplies		99.76
Telephone Expense		102.91
Exchange and Banking		8.26
Insurance on Back Issues		43.75
Back Issue Printing Fund		482.75
Page in College Yearbook		50.00
Law Journal Diplomas		9.87
Miscellaneous Office Expense		84.83
TOTAL DISBURSEMENTS		$6,837.22
Cash on hand, July 1, 1952 (est.)		190.45
TOTAL		$7,027.67

EXHIBIT "B" TO THE LAW JOURNAL REPORT

PROPOSED BUDGET FOR THE *MISSISSIPPI LAW JOURNAL*

July 1, 1952-June 30, 1953

Receipts

Balance in Bank, July 1, 1952 (est.)	$ 190.45
Appropriation, Mississippi State Bar	4,600.00
Law School Assessment	300.00
Sale of Back Issues	75.00
Sale of Subscriptions	150.00
Sale of Advertising Space	1,000.00
TOTAL RECEIPTS	$6,315.45

Disbursements

Printing:		
Volume XXIII, No. 4	$1,400.00	
Volume XXIV, No. 1	1,400.00	
Volume XXIV, No. 2	1,400.00	
Volume XXIV, No. 3	1,400.00	$5,600.00
Postage and Box Rent		150.00
Stationery and Supplies		100.00
Telephone Expense		120.00
Exchange and Banking		10.00
Fire Insurance on Back Issues		60.00
Page in College Yearbook		50.00
Law Journal Diplomas		7.50
Miscellaneous Office Expense		75.00
TOTAL DISBURSEMENTS		$6,172.50
Cash on hand, July 1, 1953 (est.)		152.95
TOTAL		$6,315.45

REPORT OF THE RESOLUTIONS COMMITTEE

The report of this committee is rather brief. It consists of the following resolution:

RESOLVED: That the Mississippi State Bar Association, in convention assembled, does hereby re-affirm its faith in the United States Constitution and the rights, privileges and immunities granted and the form of government secured by that instrument; and

BE IT FURTHER RESOLVED: That this Association does hereby condemn government by Executive Agreements or Treaties with foreign nations to the extent that they conflict with the provisions of the Constitution of the United States as a grave threat to the independence of he United States; and

BE IT FURTHER RESOLVED: That this Association approves in principle, and so recommends to the Congress, the adoption of an appropriate amendment to the United States Constitution which would prohibit any such Executive Agreements or Treaties with foreign nations from conflicting with the provisions thereof; and

BE IT FURTHER RESOLVED: That such amendment should provide that Executive Agreements or Treaties with foreign nations shall not become the internal law of the land until and unless they are implemented by appropriate legislation, and that no such legislation shall be valid if it is contrary to or in excess of the powers delegated to the Congress by the Constitution; and

BE IT FURTHER RESOLVED: That a copy of this resolution be forwarded to every member of the Congress, to the American Bar Association and to the various State Bar Associations.

REPORT OF STUDY COMMITTEE

For the two years previous to this the Bar has had a very active Study Committee. It came forth with a lot of meritorious recommendations which have been adopted by the State Bar. At your annual session a year ago you enjoined upon the present Study Committee the duty and the obligation of undertaking to get bills introduced in the legislature and undertaking to get those bills passed to enact into law recommendations which had previously been made and adopted by this organization.

In the early days of the recent legislative session your committee secured introduction of numerous bills which had heretofore been recommended. This was followed up by appearance before Division C of the Judiciary Committee and later before that committee *in banc,* with the result that all these bills were reported favorably and placed upon the calendar.

Numerous contacts were made with various members of the legislature in an effort to get favorable action on at least a part of these bills, but much to our disappointment, every bill died on the calendar in the hustle and bustle and "log-jam" during the closing days of the legislature. Thus it appears that after a lot of hard work nothing whatever has been accomplished, and the diligent work which has been done by your Study Committees in the past few years has been wasted effort. This is tragically ludicrous when we recall some of the many seriously heated debates which have taken place at some of our annual sessions over the adoption of some of the matters submitted by the Study Committee for approval.

We have had a few recommendations submitted for amendments to some of our present laws, and, instead of taking these up here, we have concluded that they should be referred to the new Study Committee.

We recommend that the new Study Committee be appointed shortly after adjournment of the present annual session, and that the new committee contact the members of the legislature from their respective areas of the state, and also that the new Commissioners contact the members of the legislature from their respective

districts and urge favorable action on these measures which have heretofore been adopted in our annual sessions. Without active and concerted action on these measures, most of which are not only meritorious but are badly needed, nothing favorable may be expected. Frankly, we of the State Bar take ourselves much more seriously than do the members of the legislature.

There is one further matter. In the closing days of the legislative session, I appeared on the floor of the legislature in an effort to obtain adoption of the simultaneous death statute. Now the fact of the business is that the law in Mississippi is a big mess where death occurs simultaneously, or under such circumstances that it is impossible to produce proof as to which of two parties died first. I have repeatedly said that this is one instance where the law of Louisiana is far superior to the law of Mississippi; and I will say further, that it is the only place I know of where Louisiana has us bested.

I hope that at least the simultaneous death statute will be submitted to the special session of the legislature, which I am sure will be called sometime in the early part of 1953, and that everybody will get behind that law and see that it is passed. It has been threshed out before your annual sessions here; your previous Study Committee has done a lot of work on it; they have come out with a good law, which was introduced, but which died on the calendar right up near the top. We must get it passed next time.

Respectfully submitted: Lee Hall, Chairman.

REPORT OF EXECUTIVE COMMITTEE (JR. BAR)

The Executive Committee would like to recommend the following:

(1) The President of the Junior Bar Section should be made a member of the Board of Bar Commissioners under the Unified Bar Act. This recommendation is made because the work of the Junior Bar and the Senior Bar is practically the same, and the legislative composites and the code study composites feel the more integrated the programs are, the more efficient they will be and the better work they will accomplish, and by having the President of the Junior Bar Association a member of the Board of Bar Commissioners, he will be able to work with both organizations to bring about harmonious programs.

(2) The Lawyers and CPA Institute in Hattiesburg and the Annual Law Institute in Jackson should be continued, and sponsorship by the State Junior Bar Section be placed on a permanent basis.

(3) The allotment to the Junior Bar Section should be raised to $1,000, in order that the more important functions of this group can be carried on with greater efficiency. The permanent and continuing work of the Committees on Public Relations and Ethics will require a larger expenditure than in the past.

(4) The work of the Junior Bar Committee in the Unethical Practice of Law should be carried on under the authority of the specific recommendations of the Committee's report, and every lawyer in the state should be informed of the contents of these recommendations in order that they may be implemented by local bar groups.

(5) The title of the Unethical Practice of Law Committee should be changed to the Committee on Ethics.

(6) The incoming Junior Bar Executive Committee should work with the Bar Commissioners in an attempt to formulate a plan of closer coordination between the State Board of Bar Admissions and the office of the State Bar Association.

REPORT ON THE FIFTH ANNUAL LAW INSTITUTE (JR. BAR)

The Sixth Annual Law Institute was co-sponsored by the Jackson Junior Bar Association and the University of Mississippi School of Law and held on December 8th last year in Jackson. The records disclose that there were more lawyers in attendance at this sixth institute than at any prior institute, and this is due to the fine support by the Bench and Bar of Mississippi, and to the record made by the past institutes in presenting worthwhile programs to you. We are happy to report to you that we did not go into "the red."

From the many letters we received and the comments which were made to the various committeemen, it would appear that the program was an outstanding one, and one of great interest and benefit to those in attendance. Let me hasten to add that the credit for this highly successful institute is not due the one who is privileged to make this report, but to the individual members of the various committees, composed of faculty members of the Ole Miss Law School and members of the Jackson Junior Bar Association who were assigned a given task, and who completed that task with the utmost of expediency and efficiency.

As those of you who were in attendance know, the entire institute was devoted to trial practice and techniques. We were successful in obtaining two very outstanding trial practitioners to conduct the lectures for us. They were Hon. A. S. Cutler and Hon. A. Harold Frost, both of the New York City Bar, who gave most interesting and lively presentations and demonstrations on the various phases of trial work. The social hour and banquet on Friday evening afforded a period of relaxation and fellowship, which appeared to be equally enjoyed by all.

Mr. Chairman, we are indebted to, and wish to thank, the Junior Bar Section and the State Bar Association for the fine support and assistance you have given us in the past and which you gave us this past year in the promotion of this endeavor.

The co-sponsors of this annual institute encourage and solicit your suggestions and criticisms to the end that each succeeding year's institute will be even more successful than the past. The Seventh Annual Law Institute is already under way under the able guidance and chairmanship of Ray Edwards of Jackson. As in the past, you will again be polled to determine what subjects a majority of the bar would like to have presented. We urge you to take the necessary time to answer the questionnaire and return it to Ray, in order that he may then know what the wishes of the majority are.

This year's institute will again be held in Jackson, December of this year, and the sponsors look forward to seeing all of you there. These institutes are for your benefit, education, and enjoyment, and are not conducted to afford a profit to the sponsors, but to render a non-profit service to every member of the Mississippi Bar. In fact, during the past three years of the co-sponsorship of the institute by the Ole Miss Law School and the Jackson Junior Bar Association, we have shown a net

profit of only $71.43. We solicit your continued support and attendance.

Respectfully submitted: Robert E. Perry, Chairman.

REPORT OF SECOND ANNUAL LAWYERS' AND CERTIFIED PUBLIC ACCOUNTANTS' TAX INSTITUTE (JR. BAR)

Mr. Chairman, fellow members of the Mississippi Junior Bar Section, and guests: For the past two years the Junior Bar Section has made a very material contribution to the profession and to business and to the members of our Section by acting as co-sponsor of the Lawyers' and Certified Public Accountants' Tax Institute together with the Certified Public Accountants of the State of Mississippi and Mississippi Southern College, through our association with the Mississippi Southern College and with the Certified Public Accountants Association of the State of Mississippi.

In my judgment we have made available to the practitioners of these two great professions vast material which otherwise would not have been available to them. It is needless for me to say to you, as practicing members of our great profession, that perhaps in modern times there has not been so much complexity of economic expense. I am sure none of you would dissent from an expression that that particular segment of our society known as the tax segment has done nothing to mitigate the confusion; but on the other hand, it tends to accelerate the problems that we have and to intensify the situations with which we have to deal.

I believe that no young practitioner can be realistic as he approaches the mammoth responsibilities of practicing his profession if he does not realize in the very inception of his practice that he has to deal with business men and business people, and a very material part of his practice, whether he chooses it so to be or not, will be devoted directly or indirectly to the problems that taxation imposes upon us. It used to be that we thought in terms only of the living having problems with taxation; but, alas, in this modern day in which we live, we must live and we must die with problems of taxation.

There is hardly a business problem that comes to your office but that you must consider that problem and that you must temper the advice that you give to your client in the light of existing tax problems. I believe that the Junior Bar Section of the State of Mississippi very appropriately took a realistic view of this problem in helping make available to the practitioners of the legal and accounting professions some of the "know-how" of approaching the tax problem.

As I stated, for two years the co-sponsoring agencies have attempted to bring to the practitioners in the fields of accountancy and law the very best talent which we can get in this section, consisting primarily of professors and authors of tax books. Last year we had a very renowned authority from Vanderbilt University, an author, who discussed the problems of inheritance taxation and gift taxation. We had Dean Farley of the University of Mississippi Law School. Not only have we attempted to bring men of academic accomplishment to these institutes, but we have, where possible to do so, brought to the Institute administrative heads of the various taxing agencies. The Mississippi State Tax Commission has cooperated very beautifully with the Institute. The Department of Internal Revenue has cooperated. The lawyers and certified public accountants experienced before the tax courts, before the administrative tribunal, before conferees, and before the various agencies with

which the practioner must deal in the field of taxation give unlimitedly of their time and experience to the Institute, so that the Institute has brought and made available to lawyers and to accountants the experienced heads of the various taxing fields.

I want to recommend, Mr. Chairman, that the Junior Bar Section continue to cooperate with these two agencies. I want to say that there is now in its planning the third annual institute to be held on dates tentatively fixed as August 8th and 9th of this year. In my judgment the Junior Bar is rendering an unparalleled service to its members in making this service available to them. We say to you individual lawyers that if you have not availed yourselves of the vast material, technical "know-how," and the guidance of experienced men that is available to you, you should make your plans now to equip yourselves to deal with such problems by attending this institute.

Mr. Chairman, I believe that fairly presents to this group the function of the Institute and I should like to recommend to you that by appropriate action the Junior Bar Section continue to act as co-sponsor of this very worthwhile endeavor.

Respectfully submitted: Bruce Aultman, Chairman.

REPORT OF THE PUBLIC RELATIONS AND INFORMATION COMMITTEE (JR. BAR)

There has been no integrated state-wide effort by the Public Information Committee of the Junior Bar Section during the past year to establish and maintain a public information or a public relations program on behalf of the Bar Association.

There have been isolated instances where a local organization has planned and in some instances put into operation a public relations program. The Jackson Junior Bar has been particularly diligent in setting up such a program.

Regardless of the failure of this Committee to put into operation a coordinated program, the need for some serious study and decisive action in the field of public relations on behalf of the Mississippi lawyer has been thoroughly recognized, and with this in mind this report takes the form of recommendations and suggestions to future committees.

Not too many years ago the average country lawyer was regarded by his fellow townspeople as deserving of the highest esteem and he was placed on a pedestal along with the minister, the physician and the teacher. Unfortunately, today we lawyers cannot lay claim to being so highly regarded by our fellow citizens. Today, in too many cases, the terms "shyster" or "ambulance chaser" have become synonymous with "attorney," "counsellor" and "advocate." There are a number of reasons for this unfortunate situation. But it is this committee's contention that a large part of the blame can be placed on our own shoulders for our lethargy in failing to blow our own horns, or at least the failure to blow them collectively. By our failure to maintain good public relations we have let the antics and actions of a very small percentage of our brethren be accepted by the public as the criterion by which we all are to be judged.

Through this committee's correspondence with the Public Information Committee of the American Bar Association it has been determined that Bar Associations in

other states have been successful in varying degrees in attempting to present to the public a truer picture of the lawyer. These activities in other states have taken the form of radio and television programs as well as informative newspaper articles. There is a wealth of material to be made available to us in Mississippi through the offices of the American Bar Association, which material has been tested and found effective in other parts of the country. Of course, it could be adapted to our own purposes. This committee recommends that the incoming president appoint a very strong Public Information Committee, and that this committee be instructed to investigate thoroughly the best means to carry out an effective public relations program in Mississippi on behalf of all of the lawyers in the state, and that the Mississippi State Bar be requested to appropriate the sum of $200 to operate this program during the first year. It is also suggested that banks, title insurance companies and possibly other insurance companies would be willing to underwrite part of the expense of such a program. (A few years ago the New Orleans daily newspapers carried a series of advertisements sponsored by the banks in that city suggesting that people consult lawyers when various business and family problems arose.)

When all is said and done, the best public relations is through personal contact, and in the interest of our own economic well-being it behooves all of us to conduct our public and private affairs in such a way as to merit the highest regard of our fellow citizens. We all must make a positive effort to avoid any appearances of the evils of which lawyers have been accused.

Respectfully submitted: Thomas D. Bourdeaux, Chairman.

After reading the above report, Mr. Rowan Taylor gave the following remarks:

I would like to say just a few things about this, add a little more specifically, mainly to get it in the record so you can all read it and think about it a little.

In Jackson, as the report said, we have embarked on a very intensive public relations program. This thing has been, or will be, in four fields, when we get it going like we want it. The first method of public relations is paid advertising in the newspaper. We did that several years ago. Several years ago we had about $150 paid advertisements in the paper, printed in the name of the Jackson Junior Bar Association, which gave information on how to make a will or what to do when buying property. That is one form of improving public relations, by advertising.

The second form is that of a donated column in a newspaper, donated space. In other words, we had in Jackson space donated in a weekly column to present legal matters, interesting anecdotes and things of that kind.

The third manner is by radio. All radio stations are required to donate a certain percentage of their time for public affairs. They are all anxious to get time filled. Here is a splendid opportunity for public relations on behalf of this bar association or any local bar association.

The fourth, and probably the most effective means that could be set up on a state-wide basis, is a speaker's bureau. We in Jackson are getting up a list of topics for speeches, How to Prepare a Will, What to Do When You Buy Property, Questions on Taxes. We propose to send out a list of these talks to all the civic clubs in Jackson. These civic clubs meet once a week. They are anxious to fill their programs for last minute cancellation, and are always looking for a ready program.

This is a splendid opportunity for good public relations which does not cost a cent. This is something that could be done in smaller towns. Even if they only have one or two lawyers, generally they have a civic club. The two should get together, one write a speech on one subject, another on the other, and form good public relations there.

One other thing we are doing in Jackson (we are not trying to brag about what we are doing, I just want you to see our program of public relations) is setting up a legal aid program, something to my knowledge that has never been attempted in this state. That is charity legal aid. Of course, to get that started, we are going to have publicity about it. I don't know whether it can be set up on a state-wide basis or not. It is probably a legal problem.

I would like to say one thing though, in any form of public relations you get into, you want to keep it simple. The average person does not know what tort, or declaration, or bill of complaint, or joint tenancy is. The average layman does not know what those are; you have to keep the terminology simple. Don't be like the old blind beggar that had seven children. A guy walking down the street one day addressed the beggar, "Don't you think it is pretty bad, a man in your condition to have that many children?"

The old blind beggar said, "Well, can I help it if I don't see what I am doing?"

REPORT OF THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE (JR. BAR)

The following report of your committee on the unauthorized practice of law is in fact a summary of the experiences and recommendations of a cross-section of the members of the Junior Bar Section. No specific complaints have been registered with your committee during the past year, and no formal action has been taken by this committee as such.

Unfortunately, our committee does not feel that such conditions reflect any lessening of the evil of the unauthorized practice of law; rather it reflects a deplorable lack of interest on the part of the members of our association, who too often complain and discuss in generalities the various aspects of the situation, but fail and refuse to institute the necessary procedures to remedy or alleviate the problems in their community. We are happy to report, however, that in some counties and court districts affirmative action has been taken within the past year by local bar associations to eliminate certain gross cases of the unauthorized practice of law in those particular districts.

With few exceptions the unauthorized practice of law can and must be solved on the local level. As a matter of fact, the solution to this problem is found in the same answer book which can furnish the remedy to most of our current community and governmental problems. The universal weakness in our present dilemma is as follows: The more distant the evil, the louder we talk and more concrete are our proposals; the closer the condition the more vague becomes our analysis and the less energetic are our efforts to correct the evils. We may be in need of a few additional statutes on the state level, but the greatest need in combating the unauthorized prac-

tice of law is vigilance in the community and decisive action by local bar groups.

Your committee sent questionnaires to members of the Junior Bar in more than 20 typical counties in the state, asking for comment and suggestions on the following questions: (1) Has the problem of unauthorized practice of law increased during the past year? (2) What type of offenses are the most frequent in your county or court district? (3) Has any effort been made by your local bar association or by a group of lawyers in your area to stop such practices? (4) Are there any steps which can be taken by the bar association to eliminate such abuses?

The response to the questionnaires was most gratifying, and the answers and recommendations made by the attorneys who responded to the questionnaire could be summarized as follows:

The vast majority of attorneys did not believe there has been a substantial increase in the unauthorized practice of law during the past 12 months.

Justices of the peace, accountants, and real estate agents received the greatest amount of criticism and were cited as the groups who most frequently attempted to perform legal services. Banks and title insurance companies received their share of criticism. There were a few complaints against chancery clerks, but on the whole this group was highly commended for taking positive steps to avoid embarrassing requests by constituents who demand performance of legal services by them.

The answers to the questionnaire indicated that all successful efforts to curb the unauthorized practice of law had their origin in the local bar groups which exerted continuous pressure on the offenders.

Some of the recommendations merit your attention:

(1) In several counties during the past year special bar association meetings were held to which all justices of the peace in the county were extended written invitations or actually requested by the chancellor to attend. The laws covering the unauthorized practice of law were set forth and explained in detail. One bar association acting through its chancellor summoned the chancery clerk and other officials who were writing deeds, drawing wills, deeds of trust, etc.; and the chancellor enjoined the group and instructed them not to continue such practice. He further gave the group notice that if such practices continued the violators would be cited for contempt of court.

Your committee is of the opinion that such meetings properly conducted by local bar groups could do much to eliminate certain unauthorized practices of law throughout the state.

(2) In a number of counties the chancery clerks in their offices have posted a notice citing the law on unauthorized practice and the penalty for its violation. Such actions have greatly improved the situation in these counties, and at the same time the clerk is being relieved of a great deal of pressure exerted upon him by his constituents.

Another similar recommendation is that the State Bar Association should have printed signs for clerks, justices of the peace and real estate agents to be posted in their respective offices, advising the public that these officers and businessmen cannot perform legal services. A suggested form is as follows:

"I DO NOT PRACTICE LAW.
The law forbids me to prepare any of the following instruments:
Deeds
Mortgages and Deeds of Trust
Contracts
Wills
Other Legal Documents
Go to an attorney of your own choice for the preparation of these instruments.
Thank you."

(3) A recommendation made by almost 100% of the lawyers polled was that the bar associations, both on local and state level, should begin and carry through a stronger publicity program in press and radio, stressing the meaning of legal services and the great danger of the unauthorized practice of law.

(4) Several attorneys suggested that the State Bar Association should make an effort to be granted the privilege of having a representative address state conventions of various groups such as banks, certified public accountants, real estate agents and others. The purpose of such an address would be to set forth in an inoffensive manner the relationship between the practice of law and the practices of the particular business of the group assembled and to explain as well as possible the intangible line between legal services and the services offered by such group. It was further recommended that the Bar Association have copies of the address printed and mailed to the entire membership of the business group addressed.

(5) The committee believes that the Junior Bar Section and the Senior Bar Section should have a joint committee on the unauthorized practice of law, which committee in turn should appoint sub-committees on a regional basis, one to each chancery court district, with full power to prosecute any offender.

In order that there be no misunderstanding of this report, the committee wants to make it clear that the vast majority of our banks, title insurance companies and agents, accountants, clerks, real estate agents, and others adhere to the principles which have been established by law and practice in reference to the rendering of legal services. We cannot ignore the fact, however, that in the past, as will undoubtedly occur in the future, there has been the exception to the rule; and the bar association must be ready to act promptly and without fear when the interests of the people and our profession so demand. Your committee is of the opinion that the recommendations above in regard to joint meetings of the local bar associations with other groups, the sending of notices to clerks, real estate agents, justices of the peace and others, and a stronger publicity program will greatly reduce the amount of unauthorized practice of law which now occurs either through ignorance or under pressure. Your committee feels that those cases of willful and intentional violation of our laws concerning unauthorized practice must be dealt with firmly and promptly with the initial action being instituted by a local bar group.

With a few exceptions, however, we return to the basic premise that we can depend upon no super-being or nebulous power to eliminate or prevent the unauthorized practice of law. The solution rests solely in the hands of the individual attorneys

of the state whose efforts as a small group or through their local bar association must furnish the necessary impetus to eliminate the evil of unauthorized practice.

The committee knows only too well that you have heard these complaints and recommendations year after year. We would be derelict in our duty not to urge as strongly as possible—*let's stop talking and get down to business!*

Respectfully submitted: Owen Palmer, Jr.

REPORT OF COMMITTEE ON UNETHICAL PRACTICE OF LAW (JR. BAR)

In 1950 the President of the Junior Bar Section, for the first time in many years, if not for the first time, appointed a Committee on the Unethical Practice of Law, composed of the entire Executive Committee of the Junior Bar Section. This committee conducted a survey and study of unethical practice of some members of the Bar. A full report was given by this committee to the Convention at its meeting last summer, and certain specific recommendations were made and adopted by the Convention. One of the recommendations which was adopted was that there be a standing committtee of the Junior Bar Section on the unethical practice of law, charged with the duty of extending and expanding the work previously initiated by the first committee. Pursuant to these instructions the President of the Junior Bar Section appointed a committee on unethical practice, composed of the Executive Committee and R. W. Heidelberg, Jr., of Hattiesburg, who was named Chairman. Your committee has continued the study of the problems undertaken by its predecessor and has put into effect some of its specific recommendations.

The present Committee has given considerable study to the report of the previous Committee and endorses this report in its entirety. Your committee wishes to make the following report of its observations and recommendations:

(1) It is felt that the work of this committee should not be limited to seeking out and eliminating unethical practice on the part of some members of the Bar, but should also take a positive approach to the subject of ethics and strive to impress upon our members and prospective members high ethical ideals so that through a proper indoctrination of ethical principles none of us will be guilty of unethical practice. In accordance with the committee's views on this approach to the subject, it is felt that the name of the committee should be changed to "Committee on Ethics," and such is the recommendation of your committee.

(2) It is felt, secondly, that the committee should be made a permanent committee and should be composed of all the members of the Executive Committee of the Junior Bar Section, together with such other person, or persons, named thereon by the President of the Junior Bar Section, and your committee recommends that this be done.

(3) Your committee feels quite strongly that a continued effort should be made to raise the educational and moral standards for admission to the Bar, and that this association and its individual members should strive to that end. In connection with the educational phase of the subject, your committee feels that greater emphasis should be placed on the subject of ethics in the curricula of the law schools of this State, and that at least one course on the subject of ethics should be taught each

year a student is in law school. Further, the subject of ethics should not be limited to the teaching of theory by faculty members, but should also include speeches and discussions by practicing attorneys dealing with specific problems of ethics. Your committee recommends that the President of the Junior Bar Section advise the deans of the law schools of this State of the consensus of this body with reference to this subject of education, and that the President of the Junior Bar Section and the President of the Mississippi State Bar Association offer and make available to the deans of the law schools practicing attorneys to speak to the students on the subject of ethics, and request that such attorneys be allowed to speak to the students at least one time during each semester. It is further recommended that the Secretary of the Mississippi State Bar Association furnish each student in the law schools of the State with a copy of the rules of professional conduct of the Mississippi State Bar Association.

The committee feels that, in addition to the law schools of this State placing more emphasis on the subject of ethics, the Board of Bar Admissions also should include on its examinations questions and discussions on the subject of ethics, and also that any applicant should be furnished with a copy of the rules of professional conduct for study before taking the examination. Your committee recommends, therefore, that the President of the Junior Bar Section request the Chairman of the Board of Bar Admissions, on behalf of this association, to place more emphasis on the subject of ethics in its examinations for applicants on admission to the Bar, and also that the Chairman of the Board of Bar Admissions notify the Secretary of the Mississippi State Bar Association of the names and addresses of all applicants for admission to the Bar and that the Secretary mail to each applicant a copy of the rules of professional conduct of the Mississippi Bar Association for study before taking the Bar examination.

(4) Last year's committee made a specific recommendation that the judges of this state take a more vigilant and vigorous attitude regarding the ethical conduct of the attorneys practicing before them, and also that attorneys practicing before such judges advise the judge of any unethical conduct observed in the course of any trial. Your Committee feels that if carried out this course of action can go a long way in improving the ethical standards, and your committee recommends that the Secretary of the State Bar Association prepare copies of these specific recommendations made by last year's committee with reference to judges and practicing attorneys, and mail a copy to each judge of every court in the State.

(5) Last year's committee's report recommended that the subject of ethics be incorporated as often as feasible on programs presented to the association at its various meetings, and also that local bar associations do likewise. Pursuant to this recommendation your Committee is pleased to report that the President of the Junior Bar Section provided a prominent place on the agenda for today's meeting for an excellent address on the subject of ethics by the Honorable Charles B. Snow of Jackson, which you have just heard. It is the committee's recommendation that this plan be followed in subsequent years so that the subject of ethics and the requirements of the rules of professional conduct will be constantly before the members of this Bar. Your Committee reports that it made a similar request of the President of the Mississippi State Bar Association but evidently it was not deemed feasible by him to include on the agenda of the State Bar Association such a speech at this convention. Your committee recommends, however, that the State Bar Association

be urged to incorporate in its programs in the future timely discussions of various problems of professional ethics and that this be a continuing program.

(6) After the publication of the report of last year's committee in the Mississippi Law Journal, the Secretary of the Mississippi State Bar received requests for 125 copies of the rules of professional conduct of the Mississippi State Bar, which she promptly furnished. The committee urges every member of the Association to secure a copy of these rules and to read them thoroughly.

(7) This association at its meeting last summer in adopting the report of last year's committee directed the President of the Junior Bar Section to establish within the Junior Bar a committee for the handling of complaints of members of the Junior Bar Section, charged with the duty of making an impartial investigation of any member of the Junior Bar Section charged with unethical conduct and of making recommendation to the complaint authorities of the State Bar Association, and it was also directed by this association that there be appointed in each county or in each group of counties a committee to be appointed by the President of the Junior Bar Section, or by the local Bar Associations, charged with the duty of being constantly on the alert for unethical practice, and of investigating any unethical practice and bringing it to the attention of the proper complaint authorities. Your committee is pleased to report that your President has carried out these instructions by appointing a Grievance Committee of the Junior Bar Section, composed of five members. However, since the committee has only been recently organized and since this program is in its infancy, no complaints or requests for investigation have been referred to this committee. County committees have been appointed in a few counties, but a coordinated effort is required to effectuate the directions of the Association in this respect. It is, therefore, the recommendation of your Committee that the Grievance Committee of the Junior Bar Section be made a permanent committee, to be appointed each year by the President of the Junior Bar Section. It is the further recommendation of the committee that the local bar associations be urged immediately to set up such local committees and to notify the President of the Junior Bar Section and the Secretary of the Mississippi State Bar Association of the establishment of such committee and the name and address of its chairman, and that if this is not done by the local associations within a reasonable length of time that the President of the Junior Bar Section carry out the directions of this association as adopted last summer by appointing such local committees in any locality where the local association has failed to do so.

In order to implement the ideas and recommendations herein expressed, your committee submits for your consideration the following resolution:

BE IT RESOLVED by the Junior Bar Section of the Mississippi State Bar Association assembled in Convention on this 19th day of June, 1952, that the above and foregoing report of the committee on unethical practice of law be approved and adopted by this association as fully and completely as if the same were copied at length in this resolution, and that the specific recommendations set forth therein be adopted as a plan of action of this association with reference thereto, and that the proper officers of the Junior Bar Section be directed to take such action as is necessary to carry out such recommendations and direction.

Respectfully submitted: Committee on Unethical Practice of Law, R. W. Heidelberg, Jr., Chairman.

APPENDIX B

ADDRESSES

EDUCATIONAL REQUIREMENTS FOR VOTING

Edwin White

Mr. President, ladies and gentlemen of the Bar, in 1952 the Mississippi Legislature felt that to preserve and maintain the integrity of the electorate of Mississippi, it is necessary to increase the qualifications to vote. We knew that most of our sister states in the South had increased their qualifications in the past fifteen years. We realize that our qualifications to vote have not been increased in the past fifteen years, yet the state of Mississippi spent ten million dollars since that time in education. We felt in the name of good government we should now reap dividends from this ten million dollars spent on education. Our present statute[1] prescribing the qualifications for education reads as follows: "On and after the first day of January, A. D. 1892, every elector shall, in addition to the foregoing qualifications, be able to read any section of the Constitution of this state; or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after January the first, A. D. 1892."

As you will recall, about four years ago the Attorney General of Mississippi rendered an opinion, which surely was the only opinion that could have been rendered by him, that if any person could read any section of the Constitution of Mississippi, that person could register. Now the proposed amendment we have does not apply to any person who is a duly registered qualified elector prior to January 1, 1952. In studying this question, one of our good Mississippi Congressmen prevailed upon the Library of Congress to furnish us with a brief of the comparable sections of constitutions in various sections of the Union. We had that in the Legislature, mimeographed, knew the comparable sections set out in this brief, and not only those sections but the court decisions on them. It was on the basis of that, on the basis of continued study by the Constitution Committee of the House of Representatives and Constitution Committee of the Senate, and work of many in the various departments of the government, feeling how very necessary it is at this time to preserve the integrity of our electorate, that this Constitutional amendment was framed.

I would like to call your attention to this proposed amendment. Every bit of surplus has been eliminated from it, only eighteen lines in it. I invite your attention to the reading of it, and I would like to say this, no part of this is anything new in constitutions of many other states in the Union, having been upheld by their courts. To amend Section 244 of the Constitution of 1890 of the State of Mississippi to read as follows: "Every elector shall, in addition to the foregoing qualifications be able to read and write any section of the Constitution of this state." Most of our sister states in the South have increased their qualifications. We stand today as having the lowest qualifications of any state in the South. Here are the states having the read and write clause: Alabama, Georgia, Louisiana, Massachusetts, New Hampshire, North Carolina, Oklahoma, Oregon, and South Carolina. In addition to the read and write clause, giving reasonable interpretation to the county registrar, the only states having the reasonable interpretation clause are Alabama and Louisiana. "He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government." The states

[1]Miss. Const. Art. XII, § 244.

having this clause are Alabama and Louisiana. Incidentally, it is right on the principles of Thomas Jefferson, who said on this question, every citizen should be able to understand his duties to his neighbor and to his country. Then on down to the last clause, which deals with written application: "A person applying to register shall make a sworn, written application for registration on a form to be prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the country registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar." That was taken practically verbatim from the constitution of the State of Virginia, and Alabama and Louisiana also have the same provisions. I would just like to read you three lines from the Supreme Court of the State of Virginia as to the desirability of this written application. "Among the purposes so served is that if registration be denied and appeal be taken by the applicant, this entire record may be promptly presented to the court."[2]

Then the next clause there says this: "Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1952."

This proposed amendment to the constitution is not new. It has been passed on and is the tried experience of other states. It is also framed to meet the requirements as pointed out in the decision on the Boswell amendment, *Davis* v. *Schnell*.[3] The states have a right to prescribe literacy tests for electors, and we felt it our duty at this time, when it is so necessary that the integrity of our electorate should be preserved and we should have as good government as possible to protect the institutions our fathers fought for, to pass this proposed amendment and submit it to the people.

I am not asking for a resolution of approval at all, but simply calling it to your attention, knowing the high regard people have for the opinion of the Mississippi Bar, and knowing you will be called on in your various counties and towns for an opinion about this matter. We feel what we have, based on the experience of other states, planned on the constitutions of other states, is reasonable. We feel if it ever is knocked down by an appellate court, then they will have to strike it out of constitutions of other states. After some sixty years we feel it is our duty to increase the qualifications.

[2]187 Va. 659, 47 S.E.2d 329 (1948).
[3]81 F. Supp. 872 (S.D. Ala. 1949), *aff'd*, 336 U.S. 933 (1949).

Mississippi Law Journal

JOURNAL of the MISSISSIPPI STATE BAR
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VOLUME XXIII OCTOBER, 1952 NUMBER 4

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MISSISSIPPI LAW JOURNAL

VOLUME XXIII
1951-1952

Published by

Mississippi State Bar

and

University of Mississippi School of Law

UNIVERSITY, MISSISSIPPI

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PREPARED BY JESSE D. PUCKETT, INDEX EDITOR

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